

104TH CONGRESS
1ST SESSION

S. 768

To amend the Endangered Species Act of 1973 to reauthorize the Act,
and for other purposes.

IN THE SENATE OF THE UNITED STATES

MAY 9 (legislative day, MAY 1), 1995

Mr. GORTON (for himself, Mr. JOHNSTON, Mr. SHELBY, Mr. BREAUX and Mr. PACKWOOD) introduced the following bill; which was read twice and referred to the Committee on Environment and Public Works

A BILL

To amend the Endangered Species Act of 1973 to
reauthorize the Act, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS; REF-**
4 **ERENCES.**

5 (a) SHORT TITLE.—This Act may be cited as the
6 “Endangered Species Act Reform Act of 1995”.

7 (b) TABLE OF CONTENTS.—The table of contents of
8 this Act is as follows:

Sec. 1. Short title; table of contents; references.
Sec. 2. Purposes.

TITLE I—ENSURING THE INTEGRITY OF THE LISTING AND CRITICAL HABITAT DESIGNATION PROCESSES

- Sec. 101. Requiring peer review.
- Sec. 102. Considering State, local, and foreign government activities.
- Sec. 103. Improving the collection and analysis of scientific information.
- Sec. 104. Improving public hearings in the listing process.
- Sec. 105. Considering breeding populations in making listing determinations.
- Sec. 106. Providing equal access to judicial review.
- Sec. 107. Setting a standard for emergency rulemaking.

TITLE II—BROADENING THE RECOVERY PLAN TO CONSTITUTE A CONSERVATION PLAN AND MAKING THE CONSERVATION PLAN CENTRAL TO THE IMPLEMENTATION OF THE ENDANGERED SPECIES ACT OF 1973

- Sec. 201. Providing for coordination of conservation decisionmaking for a species after the listing determination; ensuring timely, comprehensive, and effective conservation plans.
- Sec. 202. Providing transition periods for conservation plan preparation.
- Sec. 203. Making technical and conforming amendments to ensure that conservation objectives and plans are the focus of management under the Endangered Species Act of 1973.

TITLE III—IMPROVING THE CONSULTATION AND CONFERENCING PROCESSES FOR FEDERAL AGENCY ACTIONS

- Sec. 301. Clarifying the consultation and conferencing standards.
- Sec. 302. Identifying when consultation is required.
- Sec. 303. Making the consultation deadlines binding.
- Sec. 304. Enhancing applicant participation.
- Sec. 305. Specifying the reasonable and prudent alternatives identification process.
- Sec. 306. Clarifying the relationship of the consultation requirement with the land management planning requirements for Federal lands.
- Sec. 307. Further clarifying Federal agency responsibilities.
- Sec. 308. Clarifying the effects of secondary impacts.
- Sec. 309. Requiring risk assessment and cost benefit analyses in the consultation process.
- Sec. 310. Eliminating the Endangered Species Committee.

TITLE IV—ENSURING THAT THE COMPLIANCE PROCEDURES AND STANDARDS FOR NON-FEDERAL PERSONS ARE NOT MORE BURDENSOME THAN THE PROCEDURES AND STANDARDS AP- PLICABLE TO FEDERAL AGENCIES

- Sec. 401. Establishing consultation procedures with respect to private actions.
- Sec. 402. Defining the taking prohibition in accordance with the intent of Congress.
- Sec. 403. Clarifying the application of taking prohibitions.
- Sec. 404. Authorizing the issuance of general permits.
- Sec. 405. Improving the non-Federal conservation planning process.
- Sec. 406. Encouraging exchanges to protect habitat on non-Federal lands.

TITLE V—PROVIDING FOR HABITAT CONSERVATION INCENTIVE PROGRAMS

- Sec. 501. Providing for cooperative management agreements.
 Sec. 502. Providing for habitat reserve grants.

TITLE VI—OTHER AMENDMENTS MAKING THE ENDANGERED
 SPECIES ACT OF 1973 MORE EFFECTIVE AND LESS BURDEN-
 SOME

- Sec. 601. Providing guidance for the release of experimental populations.
 Sec. 602. Recognizing captive propagation as a means of recovery.
 Sec. 603. Clarifying the application of prohibitions to threatened species.
 Sec. 604. Encouraging research on alternative methods and technologies.
 Sec. 605. Modifying enforcement authority.
 Sec. 606. Providing adequate notice of hearings.
 Sec. 607. Ensuring the protection of private property rights.
 Sec. 608. Ensuring the use of water rights in accordance with existing State
 laws.
 Sec. 609. Providing for Federal cost-sharing of implementation costs imposed
 under conservation plans or agency consultations.
 Sec. 610. Enhancing public educational opportunities.

TITLE VII—AUTHORIZING INCREASED APPROPRIATIONS

- Sec. 701. Reauthorizing the Endangered Species Act of 1973.

1 (c) REFERENCES TO ENDANGERED SPECIES ACT OF
 2 1973.—Except as otherwise expressly provided, whenever
 3 in this Act an amendment or repeal is expressed in terms
 4 of an amendment to, or repeal of, a section or other provi-
 5 sion, the reference shall be considered to be made to a
 6 section or other provision of the Endangered Species Act
 7 of 1973 (16 U.S.C. 1531 et seq.).

8 **SEC. 2. PURPOSES.**

9 The purposes of this Act are—

10 (1) to improve and protect the integrity of the
 11 programs established under the Endangered Species
 12 Act of 1973 (16 U.S.C. 1531 et seq.) for the con-
 13 servation of endangered species and threatened spe-
 14 cies;

1 (2) to ensure the scientific validity of decisions
2 to designate the species and the critical habitat of
3 the species;

4 (3) to ensure balanced consideration of all im-
5 pacts of decisions implementing the Act;

6 (4) to make the conservation planning process
7 central to, and reduce the number of decisions need-
8 ed for, the implementation of the Act;

9 (5) to provide for equitable treatment of non-
10 Federal persons and Federal agencies under the Act;

11 (6) to ameliorate the impact of the Act on, and
12 provide less costly and time-consuming procedures
13 for, non-Federal lands; and

14 (7) to encourage non-Federal persons to con-
15 tribute voluntarily to species conservation.

16 **TITLE I—ENSURING THE INTEG-**
17 **RITY OF THE LISTING AND**
18 **CRITICAL HABITAT DESIGNA-**
19 **TION PROCESSES**

20 **SEC. 101. REQUIRING PEER REVIEW.**

21 Section 4 (16 U.S.C. 1533) is amended by adding
22 at the end the following:

23 “(j) PEER REVIEW REQUIREMENT.—

24 “(1) DEFINITIONS.—In this subsection:

25 “(A) ACTION.—The term ‘action’ means—

1 “(i) the determination that a species
2 is an endangered species or a threatened
3 species under subsection (a)(1);

4 “(ii) the determination under sub-
5 section (a)(1) that an endangered species
6 or a threatened species be removed from
7 any list published under subsection (c);
8 and

9 “(iii) the designation, or revision of
10 the designation, of critical habitat for an
11 endangered species or a threatened species
12 under section 5(m).

13 “(B) QUALIFIED INDIVIDUAL.—The term
14 ‘qualified individual’ means an individual with
15 appropriate knowledge, training, or experience
16 who—

17 “(i) is not otherwise employed by or
18 under contract to the Secretary of the In-
19 terior or the Secretary of Commerce; and

20 “(ii) who has not participated in the
21 listing decision.

22 “(2) NOTICE OF RIGHT TO SEEK PEER RE-
23 VIEW.—On publication of the notice of proposed
24 rulemaking for a proposed action, the Secretary
25 shall provide notice of the right to seek peer review

1 of the proposed action, by publication in the Federal
2 Register and in 1 or more newspapers of general cir-
3 culation in each area affected by the proposed ac-
4 tion. Any interested person may request the Sec-
5 retary to conduct a peer review of the proposed ac-
6 tion by submitting the request to the Secretary not
7 later than 45 days after the date of publication of
8 the notice.

9 “(3) PEER REVIEW.—If an interested person
10 submits, in accordance with paragraph (2), a request
11 for a peer review of an action, the Secretary shall
12 appoint, from among individuals recommended by
13 the head of the National Academy of Sciences, 3
14 qualified individuals who shall review, and report to
15 the Secretary on, the scientific information and anal-
16 yses on which the proposed action is based.

17 “(4) PUBLICATION OF RESULTS OF PEER RE-
18 VIEW.—The Secretary shall publish with any final
19 regulation implementing an action a summary of the
20 report of the peer review panel described in para-
21 graph (3) and the response of the Secretary to the
22 report.”.

1 **SEC. 102. CONSIDERING STATE, LOCAL, AND FOREIGN GOV-**
2 **ERNMENT ACTIVITIES.**

3 Section 4(a)(1)(D) (16 U.S.C. 1533(a)(1)(D)) is
4 amended by inserting “Federal, State, and local govern-
5 ment and international” after “existing”.

6 **SEC. 103. IMPROVING THE COLLECTION AND ANALYSIS OF**
7 **SCIENTIFIC INFORMATION.**

8 (a) STATE PARTICIPATION.—Section 4(b)(1)(A) (16
9 U.S.C. 1533(b)(1)(A)) is amended—

10 (1) by striking “best scientific and commercial
11 data available to him” and inserting “best reason-
12 ably obtainable scientific information”; and

13 (2) by inserting after “and after” the following:
14 “soliciting and fully considering the best reasonably
15 obtainable scientific information concerning the sta-
16 tus of a species from the appropriate State, if any,
17 and”.

18 (b) FEDERAL GOVERNMENT RESPONSIBILITY.—Sec-
19 tion 4(b) (16 U.S.C. 1533(b)) is amended by adding at
20 the end the following:

21 “(9) SCIENTIFIC INFORMATION.—

22 “(A) IN GENERAL.—The Secretary shall
23 identify and publish in the Federal Register,
24 with each proposed regulation promulgated
25 under subsection (a)(1) or section 5(m), a de-
26 scription of—

1 “(i) the efforts to field test all sci-
2 entific information used as a basis for the
3 regulation; and

4 “(ii) any additional scientific informa-
5 tion that has not been collected and that is
6 necessary to ensure the scientific validity
7 of the determination, along with a plan
8 and deadlines for collecting the additional
9 information.

10 “(B) PUBLIC REVIEW AND COMMENT.—

11 The Secretary shall provide an opportunity for
12 public review and comment on the scientific in-
13 formation referred to in subparagraph (A)(ii).”.

14 (c) BEST REASONABLY OBTAINABLE SCIENTIFIC IN-
15 FORMATION.—

16 (1) DEFINITIONS.—Section 3 (16 U.S.C. 1532)

17 is amended—

18 (A) by redesignating paragraphs (15)
19 through (21) as paragraphs (21) through (27),
20 respectively;

21 (B) by redesignating paragraphs (12)
22 through (14) as paragraphs (17) through (19),
23 respectively;

24 (C) by redesignating paragraph (10) as
25 paragraph (13);

1 (D) by redesignating paragraphs (5)
2 through (9) as paragraphs (7) through (11), re-
3 spectively;

4 (E) by redesignating paragraphs (2)
5 through (4) as paragraphs (3) through (5), re-
6 spectively; and

7 (F) by inserting after paragraph (1) the
8 following:

9 “(2) BEST REASONABLY OBTAINABLE SCI-
10 ENTIFIC INFORMATION.—The term ‘best reasonably
11 obtainable scientific information’ means information
12 obtainable from both public sector and private sector
13 sources.”.

14 (2) APPLICABILITY.—

15 (A) BASIS FOR DETERMINATIONS.—Sec-
16 tion 4(b) (16 U.S.C. 1533(b)) is amended—

17 (i) in paragraph (3)(B)(iii), by strik-
18 ing “data” and inserting “best reasonably
19 obtainable scientific information”;

20 (ii) in paragraph (6)(B)(i), by striking
21 “data” each place it appears and inserting
22 “best reasonably obtainable scientific infor-
23 mation”;

24 (iii) in the last sentence of paragraph
25 (7), by striking “best appropriate data

1 available to him” and inserting “best rea-
2 sonably obtainable scientific information”;
3 and

4 (iv) in paragraph (8), by striking
5 “data” each place it appears and inserting
6 “best reasonably obtainable scientific infor-
7 mation”.

8 (B) COOPERATIVE AGREEMENTS.—Section
9 6(c)(2)(B) (16 U.S.C. 1535(c)(2)(B)) is amend-
10 ed by striking “data” and inserting “best rea-
11 sonably obtainable scientific information”.

12 (C) BIOLOGICAL ASSESSMENT.—The sec-
13 ond sentence of section 7(c)(1) (16 U.S.C.
14 1536(c)(1)) is amended by striking “best sci-
15 entific and commercial data available” and in-
16 serting “best reasonably obtainable scientific in-
17 formation”.

18 (D) NOTICE AND REVIEW OF EXEMP-
19 TIONS.—The second sentence of section 10(c)
20 (16 U.S.C. 1539(c)) is amended by striking
21 “data” and inserting “information”.

22 **SEC. 104. IMPROVING PUBLIC HEARINGS IN THE LISTING**
23 **PROCESS.**

24 Section 4(b)(5) (16 U.S.C. 1533(b)(5)) is amended
25 by striking subparagraph (E) and inserting the following:

1 “(E) promptly hold at least 2 hearings in each
 2 State in which the species proposed for determina-
 3 tion as an endangered species or a threatened spe-
 4 cies is located (including at least 1 hearing in an af-
 5 fected rural area if 1 or more rural areas within the
 6 State are affected by the determination), except that
 7 the Secretary may not be required to hold more than
 8 10 hearings under this subparagraph.”.

9 **SEC. 105. CONSIDERING BREEDING POPULATIONS IN MAK-**
 10 **ING LISTING DETERMINATIONS.**

11 Section 4(b) (16 U.S.C. 1533(b)) is amended—

12 (1) by striking paragraph (2);

13 (2) by redesignating paragraph (1)(B) as para-
 14 graph (2);

15 (3) in paragraph (1), by adding at the end the
 16 following:

17 “(B) CONSIDERATION OF BRED POPU-
 18 LATIONS.—In making a determination whether
 19 a species is an endangered species or a threat-
 20 ened species under this section, the Secretary
 21 shall fully consider populations of the species
 22 that are bred through private sector, university,
 23 and Federal, State, and local government breed-
 24 ing programs for release in the habitat of the
 25 species. In the case of fish species, the bred

1 populations referred to in the preceding sen-
 2 tence shall include hatchery populations.”; and
 3 (4) in paragraph (2) (as so redesignated), by
 4 redesignating clauses (i) and (ii) as subparagraphs
 5 (A) and (B), respectively.

6 **SEC. 106. PROVIDING EQUAL ACCESS TO JUDICIAL REVIEW.**

7 Section 4(b)(3)(C) (16 U.S.C. 1533(b)(3)(C)) is
 8 amended by striking clause (ii) and inserting the following:

9 “(ii) JUDICIAL REVIEW.—Any nega-
 10 tive finding described in subparagraph (A)
 11 or any finding described in subparagraph
 12 (B) shall be subject to judicial review.”.

13 **SEC. 107. SETTING A STANDARD FOR EMERGENCY RULE-**
 14 **MAKING.**

15 (a) IN GENERAL.—Section 4(b)(7) (16 U.S.C.
 16 1533(b)(7)) is amended—

17 (1) in the first sentence, by striking “a signifi-
 18 cant risk to the well-being of” and inserting “an im-
 19 minent threat to the existence of”; and

20 (2) by adding at the end the following: “The
 21 Secretary may not delegate the final decision to
 22 issue an emergency regulation under this para-
 23 graph.”.

24 (b) DEFINITION OF IMMINENT THREAT TO THE EX-
 25 ISTENCE OF.—Section 3 (16 U.S.C. 1532) is further

1 amended by inserting after paragraph (11) (as redesignated by section 103(c)(1)) the following:

3 “(12) IMMINENT THREAT TO THE EXISTENCE
4 OF.—The term ‘imminent threat to the existence of’,
5 with respect to a species, means, as determined by
6 the Secretary under section 4(b)(7) or the President
7 under section 5(o)(2) solely on the basis of the best
8 reasonably obtainable scientific information, that
9 there is a significant likelihood that the species will
10 be placed on an irreversible course to extinction during
11 the 2-year period beginning on the date of the
12 listing determination, unless the species is accorded
13 fully the protections available under this Act during
14 the period.”.

1 **TITLE II—BROADENING THE RE-**
2 **COVERY PLAN TO CON-**
3 **STITUTE A CONSERVATION**
4 **PLAN AND MAKING THE CON-**
5 **SERVATION PLAN CENTRAL**
6 **TO THE IMPLEMENTATION OF**
7 **THE ENDANGERED SPECIES**
8 **ACT OF 1973**

9 **SEC. 201. PROVIDING FOR COORDINATION OF CONSERVA-**
10 **TION DECISIONMAKING FOR A SPECIES**
11 **AFTER THE LISTING DETERMINATION; EN-**
12 **SURING TIMELY, COMPREHENSIVE, AND EF-**
13 **FECTIVE CONSERVATION PLANS.**

14 (a) IN GENERAL.—The Act is amended—

15 (1) by redesignating section 5 (16 U.S.C. 1534)
16 as section 5A; and

17 (2) by inserting after section 4 (16 U.S.C.
18 1533) the following:

19 **“SEC. 5. COORDINATION OF SPECIES CONSERVATION EF-**
20 **FORTS; SPECIES CONSERVATION PLANS.**

21 “(a) SPECIES PROTECTION.—Upon a determination
22 that a species is endangered or threatened, the Secretary
23 shall consider whether to—

24 “(1) issue 1 or more incidental taking permits
25 under section 10;

1 “(2) enter into 1 or more cooperative manage-
2 ment agreements under section 6;

3 “(3) commence the development of a conserva-
4 tion objective under this section; or

5 “(4) carry out a combination of the activities
6 described in paragraphs (1) through (3).

7 “(b) SCHEDULE FOR CONSERVATION OBJECTIVE ES-
8 TABLISHMENT.—The Secretary shall publish a conserva-
9 tion objective for an affected species under subsection (e)
10 not later than 30 days after the date of issuance of the
11 assessment and planning team report under subsection
12 (d).

13 “(c) APPOINTMENT OF ASSESSMENT AND PLANNING
14 TEAM.—

15 “(1) IN GENERAL.—Not later than 30 days
16 after the date of a determination described in sub-
17 section (a), the Secretary shall appoint an assess-
18 ment and planning team consisting of—

19 “(A) appropriate biologists, economists,
20 and land use specialists from the Department
21 of the Secretary, other Federal agencies, and
22 the private sector;

23 “(B) such representatives from each af-
24 fected State as are nominated by the Governor
25 of the State; and

1 “(C) representatives nominated by affected
2 local governments.

3 “(2) INAPPLICABILITY OF FEDERAL ADVISORY
4 COMMITTEE ACT.—The Federal Advisory Committee
5 Act (5 U.S.C. App.) shall not apply to an assess-
6 ment and planning team appointed under this sub-
7 section.

8 “(d) ASSESSMENTS.—Not later than 180 days after
9 the date of a determination described in subsection (a),
10 the assessment and planning team shall report to the Sec-
11 retary concerning the following factors with respect to the
12 affected species:

13 “(1) BIOLOGICAL ASSESSMENT.—The team
14 shall assess—

15 “(A) the biological considerations nec-
16 essary to carry out this Act;

17 “(B) the biological significance of the spe-
18 cies;

19 “(C) the geographic range and occupied
20 habitat of the species;

21 “(D) the current population of the species;

22 “(E) the population trend of the species;

23 “(F) the technical practicality of recover-
24 ing the species;

1 “(G) the potential management measures
2 capable of recovering or reducing the risks to
3 survival of the species, including—

4 “(i) enhancement of the viability of
5 natural populations at selected locations;

6 “(ii) control of predators and competi-
7 tors;

8 “(iii) supplemental feeding;

9 “(iv) other measures to increase the
10 quantities or accessibility of food supplies;
11 and

12 “(v) other measures to enhance repro-
13 ductive success and survival of young;

14 “(H) the contribution of existing or poten-
15 tial captive breeding programs for the species;
16 and

17 “(I) whether any management measure
18 might include release of an experimental popu-
19 lation of the species outside the current range
20 of the species and, if the release is required, an
21 identification of each likely geographic area for
22 the release.

23 “(2) ECONOMIC ASSESSMENT.—The team shall
24 assess the direct, indirect, and cumulative economic
25 and social impacts on both the public and private

1 sectors that may result from the listing of the spe-
2 cies, including any effects on any county, parish,
3 State, or multi-State region or any segment of the
4 national economy, and the potential management
5 measures identified under paragraph (1), includ-
6 ing—

7 “(A) the cost of governmental actions and
8 the impacts on tax and other revenues;

9 “(B) the impacts on employment;

10 “(C) the impacts on the use and value of
11 property; and

12 “(D) the impacts on other social, cultural,
13 and community values.

14 “(3) INTERGOVERNMENTAL ASSESSMENT.—The
15 team shall assess the impacts that may result from
16 the listing of the species and the potential manage-
17 ment measures identified under paragraph (1) on
18 State and local land use laws, conservation meas-
19 ures, and water allocation policies.

20 “(e) SECRETARIAL ESTABLISHMENT OF A CON-
21 SERVATION OBJECTIVE AND DETERMINATION OF
22 WHETHER TO PREPARE A CONSERVATION PLAN FOR THE
23 SPECIES.—

24 “(1) PUBLICATION.—After considering the re-
25 port of the assessment and planning team under,

1 and the factors described in, subsection (d), the Sec-
2 retary shall publish in the Federal Register, in ac-
3 cordance with the schedule established under sub-
4 section (b), a conservation objective for the affected
5 species, together with a statement of findings on
6 which the conservation objective was established.

7 “(2) RANGE OF CONSERVATION OBJECTIVES.—
8 The conservation objective, which the Secretary shall
9 establish within the discretion of the Secretary, may
10 be—

11 “(A) recovery of the affected species;

12 “(B) such level of conservation of the spe-
13 cies and any critical habitat to be designated as
14 the Secretary considers practicable and reason-
15 able to the extent that the benefits of the con-
16 servation measures justify the human and eco-
17 nomic costs of implementation for the Federal
18 Government, State, and local governments, the
19 private sector (including any permit or license
20 applicants), and affected private individuals and
21 organizations;

22 “(C) no Federal action other than enforce-
23 ment against any person whose activity violates
24 the prohibitions specified in section 9(a), in-
25 cluding any activity that results in a taking of

1 the species, unless the taking is incidental to,
2 and not the purpose of, the carrying out of an
3 otherwise lawful activity; or

4 “(D) such other objective as the Secretary
5 may determine that does not provide a lesser
6 level of protection than the level described in
7 subparagraph (C).

8 “(3) NO CONSERVATION PLAN.—If the con-
9 servation objective established by the Secretary is
10 the objective provided in paragraph (2)(C), the Sec-
11 retary shall not prepare a conservation plan under
12 subsection (g).

13 “(f) NATIONAL INTEREST DETERMINATION WITHIN
14 ESTABLISHMENT OF A CONSERVATION OBJECTIVE FOR
15 DISTINCT POPULATION SEGMENTS.—The Secretary may
16 establish a conservation objective, other than the objective
17 provided in subsection (e)(2)(C), for a distinct population
18 segment designated under section 4(a) after the date of
19 enactment of this subsection only if the Secretary issues,
20 in conjunction with the conservation objective, a deter-
21 mination that the objective is in the national interest
22 based on biological, social, and economic considerations.

23 “(g) SCHEDULE FOR CONSERVATION PLAN PREPA-
24 RATION.—Except as provided in subsection (e)(3), the
25 Secretary shall—

1 “(1) direct the assessment and planning team
2 to prepare a draft conservation plan for the affected
3 species that includes alternative strategies required
4 under subsection (i);

5 “(2) not later than 1 year after the date of a
6 determination described in subsection (a), publish a
7 draft conservation plan for the affected species and
8 a draft regulation to designate any habitat of the
9 species as critical habitat under subsection (m); and

10 “(3) not later than 18 months after the date of
11 a determination described in subsection (a), publish
12 a final conservation plan for the affected species and
13 a final regulation to designate any habitat of the
14 species as critical habitat under subsection (m).

15 “(h) CONSERVATION PLAN PRIORITIES.—In the de-
16 velopment and implementation of a conservation plan or
17 plan revision under this section, the Secretary shall accord
18 priority to—

19 “(1) the development of an integrated plan for
20 2 or more endangered species or threatened species
21 that are likely to benefit from an integrated plan;

22 “(2) the geographic areas where conflicts be-
23 tween the conservation of species and development
24 projects or other forms of economic activity exist or
25 are likely to exist; and

1 “(3) the implementation of conservation meas-
2 ures that have the least economic and social costs.

3 “(i) ALTERNATIVE STRATEGIES.—On the basis of
4 the assessments made under subsection (d), the assess-
5 ment and planning team shall include, in each draft con-
6 servation plan and plan revision, alternative strategies to
7 achieve the conservation objective for the affected species.
8 The alternative strategies shall range from a strategy re-
9 quiring the least possible Federal management to achieve
10 the conservation objective to a strategy involving more in-
11 tensive Federal management to achieve the objective.
12 Each alternative strategy shall contain—

13 “(1) an estimate of the risks to the survival and
14 recovery of the species that the alternative would en-
15 tail;

16 “(2) a description of any site-specific manage-
17 ment measures recommended for the alternative;

18 “(3) an analysis of the relationship of any habi-
19 tat of the species proposed for designation as critical
20 habitat to the site-specific measures;

21 “(4) a description of the direct and indirect
22 costs to the public and private sectors, including ef-
23 fects on employment, any multi-State region, or any
24 segment of the national economy, that may result
25 from the alternative;

1 “(5) a description of any social dislocation that
2 may result from the alternative;

3 “(6) an analysis of any impacts that the alter-
4 native would have on the use and value of property;

5 “(7) a description of any captive breeding pro-
6 gram recommended for the alternative;

7 “(8) an analysis of whether the alternative
8 would include any release of an experimental popu-
9 lation outside the current range of the species and
10 an identification of candidate geographic areas for
11 the release;

12 “(9) a clear differentiation between—

13 “(A) any matters recommended generally
14 for Federal agencies to conserve the species
15 under section 7(a)(1);

16 “(B) any matters recommended for Fed-
17 eral agency actions to avoid being likely to jeop-
18 ardize the continued existence of the species as
19 determined under section 7(a)(2); and

20 “(C) any matters recommended for any
21 person to avoid a taking of the species prohib-
22 ited under section 4(d) or 9(a)(1);

23 “(10) objective and measurable criteria, includ-
24 ing a population level target, that, if met, would re-
25 sult in a determination under section 4 that the spe-

1 cies be removed from a list published under section
2 4(c)(1);

3 “(11) estimates of the time and costs required
4 to carry out the actions needed to achieve the con-
5 servation objective and to achieve intermediate steps
6 toward the objective; and

7 “(12) a description of the role of each affected
8 State, if any, in achieving the conservation objective.

9 “(j) PROCEDURES.—

10 “(1) CONSULTATION WITH STATES.—The Sec-
11 retary shall consult with the Governor of each State
12 in which the affected species is located during the
13 preparation of each draft and final conservation plan
14 or plan revision.

15 “(2) PUBLICATION AND PUBLIC COMMENT.—
16 The Secretary shall publish in the Federal Register
17 and a newspaper of general circulation in each af-
18 fected county and parish—

19 “(A) a notice of the availability, and a
20 summary, of each draft conservation plan or
21 plan revision and each draft regulation des-
22 ignating any critical habitat; and

23 “(B) a request for the submission of com-
24 ments on the draft conservation plan or plan re-
25 vision and the draft regulation.

1 “(3) HEARINGS.—The Secretary shall hold at
2 least 2 hearings on each draft conservation plan or
3 plan revision in each State to which the plan or revi-
4 sion would apply (including at least 1 hearing in an
5 affected rural area if 1 or more rural areas within
6 the State are affected by the determination), except
7 that the Secretary may not be required to hold more
8 than 10 hearings under this paragraph.

9 “(4) CONSIDERATION OF COMMENTS BY THE
10 SECRETARY.—Prior to any decision to adopt a final
11 conservation plan or plan revision, the Secretary
12 shall consider and weigh carefully all information
13 presented during each hearing held under paragraph
14 (3) or received in response to a request for com-
15 ments published under paragraph (2)(B).

16 “(k) PUBLICATION OF FINAL CONSERVATION
17 PLAN.—Not later than the date of publication of a final
18 conservation plan under subsection (g)(3), the Secretary
19 shall publish in the Federal Register a notice of the avail-
20 ability, and a summary, of a final conservation plan or
21 plan revision. The notice shall include a detailed descrip-
22 tion of—

23 “(1) the reasons for the selection of the final
24 conservation plan or plan revision;

1 “(2) the reasons for not selecting each of the
2 other alternatives included in the draft conservation
3 plan or plan revision under subsection (i);

4 “(3) the effect of the priorities specified in sub-
5 section (h) on the selection; and

6 “(4) the response of the Secretary to the infor-
7 mation referred to in subsection (j)(4).

8 “(l) PARTICIPATION BY OTHER PERSONS.—In devel-
9 oping and implementing conservation plans and plan revi-
10 sions, the Secretary may use the services of appropriate
11 public and private agencies and institutions and other
12 qualified persons.

13 “(m) CRITICAL HABITAT DESIGNATION.—

14 “(1) DESIGNATION.—The Secretary may, by
15 regulation under subsection (g) and this subsection
16 and to the maximum extent prudent and determina-
17 ble—

18 “(A) designate any habitat of the affected
19 species that is considered to be critical habitat
20 and that supports the conservation objective for
21 the species; and

22 “(B) revise a critical habitat designation
23 on determining that the critical habitat does
24 not support the conservation objective.

1 “(2) BASIS FOR DESIGNATION.—The designa-
2 tion of critical habitat, and any revision of the des-
3 ignation, shall be made on the basis of the best rea-
4 sonably obtainable scientific information after taking
5 into consideration the economic impact, and any
6 other relevant impact, of designating any particular
7 area as critical habitat and of the determination
8 made under section 4(a)(1).

9 “(3) ECONOMIC IMPACTS.—

10 “(A) DESCRIPTION.—In issuing any draft
11 regulation designating critical habitat of an en-
12 dangered species or a threatened species, or re-
13 vision of the designation, the Secretary shall de-
14 scribe the economic impacts and other relevant
15 impacts that are to be considered under para-
16 graph (2), and the benefits that are to be
17 weighed under paragraph (4), in designating an
18 area as critical habitat.

19 “(B) SUBMISSION TO BUREAU OF LABOR
20 STATISTICS.—The Secretary shall submit the
21 description, and the documentation supporting
22 the description, to the Bureau of Labor Statis-
23 tics of the Department of Labor. The Commis-
24 sioner of Labor Statistics shall submit written
25 comments during the comment period on the

1 proposed regulation. In issuing any final regula-
2 tion designating critical habitat, the Secretary
3 shall respond separately and fully to each com-
4 ment.

5 “(4) CONSIDERATION OF COSTS AND BENE-
6 FITS.—The Secretary shall exclude any area from
7 critical habitat for which the Secretary determines
8 that the benefits of the exclusion outweigh the bene-
9 fits of designating the area as part of the critical
10 habitat, unless the Secretary determines, on the
11 basis of the best reasonably obtainable scientific in-
12 formation, that the failure to designate the area as
13 critical habitat will create an imminent threat to the
14 existence of the species.

15 “(n) EFFECTS OF ACTIONS CONSISTENT WITH THE
16 CONSERVATION OBJECTIVE AND PLAN.—If a conserva-
17 tion plan is prepared under subsection (g) or if a conserva-
18 tion objective is established that is described in subsection
19 (e)(3)—

20 “(1) any Federal agency that determines that
21 the actions of the agency are consistent with the
22 provisions of the conservation plan under subsection
23 (i)(9)(A) or the conservation objective shall be con-
24 sidered to comply with section 7(a)(1) for the af-
25 fected species;

1 “(2) any agency action that the Federal agency
2 determines is consistent with the provisions of the
3 conservation plan under subsection (i)(9)(B) or the
4 conservation objective shall not be subject to section
5 7(a)(2) for the species, except that a Federal agen-
6 cy—

7 “(A) may initiate consultation under sec-
8 tion 7(a)(2) if the agency desires guidance from
9 the Secretary on the consistency of the action
10 of the agency with the plan or objective; and

11 “(B) shall initiate consultation under sec-
12 tion 7(a)(2) on any action that the agency de-
13 termines is inconsistent with the plan or objec-
14 tive; and

15 “(3) any action of any person that is consistent
16 with the provisions of the conservation plan under
17 subsection (i)(9)(C) or the conservation objective
18 shall not constitute a violation concerning the spe-
19 cies of any applicable prohibition under section 4(d)
20 or 9(a), except that the person may initiate consulta-
21 tion under section 10(a)(3) if the person—

22 “(A) desires guidance from the Secretary
23 on the consistency of the action with the plan
24 or objective; or

1 “(B) desires to obtain a permit under sec-
2 tion 10 for any action that is inconsistent with
3 the plan or objective.

4 “(o) INTERIM MANAGEMENT.—

5 “(1) IN GENERAL.—Prior to the publication of
6 a conservation objective described in subsection
7 (e)(3) or a final conservation plan under subsection
8 (g)(2), the entering into of a cooperative manage-
9 ment agreement, or the issuance of an incidental
10 taking permit with respect to an endangered species
11 or a threatened species—

12 “(A) the prohibitions of section 9(a) shall
13 apply to any person, except in the case of a tak-
14 ing by a person that is incidental to, and not
15 the purpose of, the carrying out of an otherwise
16 lawful activity, which incidental taking activity
17 may include the routine operation, maintenance,
18 or repair of any structure, building, road, dam,
19 airport, or any irrigation or other facility that
20 is in operation prior to the publication of the
21 listing determination under section 4(b)(6); and

22 “(B) no Federal agency shall be required
23 to comply with section 7(a)(1) and no consulta-
24 tion shall be required on any agency action
25 under section 7(a)(2).

1 “(2) EMERGENCY PERIODS.—

2 “(A) IN GENERAL.—Notwithstanding para-
3 graph (1) and subject to subparagraph (B),
4 paragraphs (1) and (2) of section 7(a) and sec-
5 tion 9(a) shall apply fully to the affected species
6 during a period in which an emergency rule-
7 making is in effect under section 4(b)(7).

8 “(B) EXPIRATION OF DECLARATION.—Any
9 declaration of the Secretary described in sub-
10 paragraph (A) shall expire on—

11 “(i) the date of publication of a con-
12 servation objective described in subsection
13 (e)(3); or

14 “(ii) the date of publication of a final
15 conservation plan.

16 “(3) EXTENSION OF INTERIM MANAGEMENT
17 PERIOD.—The Secretary shall make every effort to
18 issue any incidental taking permit, or enter into any
19 cooperative management agreement, not later than
20 18 months after the date of a determination de-
21 scribed in subsection (a). If no such permit has been
22 issued or agreement entered into, the Secretary may
23 extend the interim management period applicable to
24 that portion of the affected species to which the per-
25 mit or agreement would apply for an additional pe-

1 riod of not to exceed 18 months if the Secretary de-
2 termines that satisfactory progress is being made to-
3 ward issuance of the permit or entering into of the
4 agreement.

5 “(p) SUSPENSION OF CONSERVATION PLAN OR OB-
6 JECTIVE.—

7 “(1) IN GENERAL.—If, at any time after the
8 date of publication of a conservation objective de-
9 scribed in subsection (e)(3) or a final conservation
10 plan under subsection (g)(3), the Secretary issues an
11 incidental taking permit or enters into a cooperative
12 management agreement, the Secretary, by publica-
13 tion of notice in the Federal Register, shall suspend
14 the conservation objective or conservation plan with
15 respect to the portion of the species to which the
16 permit or agreement applies.

17 “(2) SUSPENSION OF MEASURES WITHIN A
18 PLAN.—If a Federal contribution for costs incurred
19 under a conservation plan required under section 16
20 is not made, the applicable provision of the conserva-
21 tion plan shall be suspended until such time as the
22 full contribution is made. If the suspended provision
23 includes a conservation easement or other instru-
24 ment restricting title to property, nonpayment of the
25 full contribution for a period of more than 4 con-

1 secutive years shall result in the nullification of the
2 previously granted restriction on title.

3 “(q) NONDELEGATION OF DUTIES.—The Secretary
4 may not delegate the authority to issue an emergency rule
5 or the final decision to establish a conservation objective
6 or issue a conservation plan under this section.

7 “(r) REPORT.—Not later than 2 years after the date
8 of enactment of this subsection and biennially thereafter,
9 the Secretary shall report to the Committee on Environ-
10 ment and Public Works of the Senate and the Committee
11 on Resources of the House of Representatives on the sta-
12 tus of efforts to develop and implement conservation plans
13 for all species included in a list published under section
14 4(c)(1) and on the status of all species for which the plans
15 have been developed.

16 “(s) REVIEW OF CONSERVATION PLANS.—

17 “(1) IN GENERAL.—The Secretary shall—

18 “(A) review each conservation plan and
19 conservation objective before the end of the 5-
20 year period that begins on the date of publica-
21 tion of the plan, and before the end of each 5-
22 year period thereafter; and

23 “(B) determine whether the conservation
24 plan and conservation objective meets the re-
25 quirements of this section.

1 “(2) REVISIONS.—The Secretary shall revise a
2 conservation plan or conservation objective if the
3 Secretary determines—

4 “(A) through a 5-year review under para-
5 graph (1), that the conservation plan or con-
6 servation objective does not meet the require-
7 ments of this section; or

8 “(B) at any time—

9 “(i) that funding is not available for
10 the implementation of a specific conserva-
11 tion measure that is integral to the con-
12 servation plan or that a more cost-effective
13 alternative exists for a specific conserva-
14 tion measure that is integral to the con-
15 servation plan; or

16 “(ii) on the basis of scientific informa-
17 tion that was not available during the de-
18 velopment of the conservation objective or
19 conservation plan, that the conservation
20 objective is not achievable or the conserva-
21 tion plan will not achieve the conservation
22 objective.

23 “(3) APPLICABLE REQUIREMENTS TO REVI-
24 SIONS.—Any revision of a conservation plan or con-
25 servation objective shall be undertaken in accordance

1 with the requirements of this section applicable to
 2 preparation of a conservation plan or conservation
 3 objective.

4 “(t) STANDARD OF REVIEW.—The standard for judi-
 5 cial review of any decision of the Secretary, or a Federal
 6 agency under this section shall be whether the decision
 7 is arbitrary, capricious, an abuse of discretion, or other-
 8 wise not in accordance with law.

9 “(u) OTHER PLANS PROTECTING LISTED SPE-
 10 CIES.—Any conservation measure that provides protection
 11 to a species listed as endangered or threatened that is car-
 12 ried out under a plan developed under the Pacific North-
 13 west Electric Power Planning and Conservation Act (16
 14 U.S.C. 839 et seq.) shall be considered to be part of the
 15 conservation plan for the species for the purpose of any
 16 cost-sharing arrangement under section 16.”.

17 (b) DEFINITION OF CRITICAL HABITAT.—Section 3
 18 (16 U.S.C. 1532) is further amended in paragraph (7) (as
 19 redesignated by section 103(c)(1))—

20 (1) by striking “(7)(A)” and all that follows
 21 through the end of subparagraph (A) and inserting
 22 the following:

23 “(7) CRITICAL HABITAT.—

24 “(A) IN GENERAL.—The term ‘critical
 25 habitat’ for an endangered species or a threat-

1 ened species means the specific areas within the
 2 geographic area occupied by a species at the
 3 time the species is listed in accordance with sec-
 4 tion 4 that contain such physical or biological
 5 features as—

6 “(i) are essential to the persistence of
 7 the species over the 50-year period begin-
 8 ning on the date the regulation designating
 9 the critical habitat, or any revision of the
 10 regulation, is promulgated; and

11 “(ii) may require special management
 12 considerations or protection.”; and

13 (2) in subparagraph (C), by striking “which can
 14 be”.

15 (c) CONFORMING AMENDMENTS.—

16 (1) Section 6(d)(1) (16 U.S.C. 1535(d)(1)) is
 17 amended by striking “section 4(g)” and inserting
 18 “section 4(f)”.

19 (2) Section 10(f)(5) (16 U.S.C. 1539(f)(5)) is
 20 amended by striking the last sentence.

21 (3) Section 7(a)(1) of the Land and Water
 22 Conservation Fund Act of 1965 (16 U.S.C. 460/-
 23 9(a)(1)) is amended by striking “section 5(a)” and
 24 inserting “section 5A(a)”.

1 (4) Section 5(b) of Public Law 103–64 (16
2 U.S.C. 460iii–4) is amended by striking “section
3 5(b) of the Endangered Species Act of 1973 (16
4 U.S.C. 1534(b))” and inserting “section 5A(b) of
5 the Endangered Species Act of 1973”.

6 (5) Section 101(a)(5)(E)(i)(II) of the Marine
7 Mammal Protection Act of 1972 (16 U.S.C.
8 1371(a)(5)(E)(i)(II)) is amended by striking “a re-
9 covery plan has been developed or is being developed
10 for such species or stock pursuant to the” and in-
11 serting “a conservation plan has been developed or
12 is being developed for the species or stock pursuant
13 to section 5 of the”.

14 (6) Section 104(c)(4) of the Marine Mammal
15 Protection Act of 1972 (16 U.S.C. 1374(c)(4)) is
16 amended—

17 (A) in subparagraph (A)(ii)—

18 (i) in subclause (I), by striking “any
19 recovery plan developed under section 4(f)”
20 and inserting “any conservation plan devel-
21 oped under section 5”; and

22 (ii) in subclause (II)—

23 (I) by striking “or recovery”; and

24 (II) by striking “or a recovery
25 plan”; and

1 (B) in subparagraph (B)(iii), by striking
2 “recovery plan” and inserting “conservation
3 plan”.

4 (7) Section 115(b)(2) of the Marine Mammal
5 Protection Act of 1972 (16 U.S.C. 1383b(b)(2)) is
6 amended by striking “recovery plans required under
7 section 4(f) of the Endangered Species Act of 1973
8 (16 U.S.C. 1533(f))” and inserting “conservation
9 plans required under section 5 of the Endangered
10 Species Act of 1973”.

11 (8) Section 118(f)(11) of the Marine Mammal
12 Protection Act of 1972 (16 U.S.C. 1387(f)(11)) is
13 amended by striking “recovery plan developed for
14 such species or stock under section 4” and inserting
15 “conservation plan developed for the species or stock
16 under section 5”.

17 **SEC. 202. PROVIDING TRANSITION PERIODS FOR CON-**
18 **SERVATION PLAN PREPARATION.**

19 (a) EXPEDITED CONSERVATION PLAN ISSUANCE.—

20 (1) IN GENERAL.—Not later than 30 days after
21 the date of enactment of this Act, the Secretary (as
22 defined in section 3 of the Endangered Species Act
23 of 1973 (16 U.S.C. 1532)) shall publish a list of all
24 species that were determined to be endangered spe-
25 cies or threatened species under section 4 of the Act

1 (16 U.S.C. 1533) for which no final recovery plans
2 were issued under section 4(f) of the Act (16 U.S.C.
3 1533(f)) (as in effect on the day before the date of
4 enactment of this Act).

5 (2) SPECIES LISTED IN MORE THAN 1 STATE.—

6 In the case of a species that is listed as endangered
7 or threatened in more than 1 State, the Secretary
8 shall publish under section 5 of the Endangered
9 Species Act of 1973 (as amended by section 201) a
10 conservation objective not later than 210 days, a
11 draft conservation plan not later than 1 year, and a
12 final conservation plan not later than 18 months,
13 after the date of enactment of this Act, unless a con-
14 servation objective is published that is described in
15 section 5(e)(3) of the Act.

16 (3) SPECIES LISTED IN 1 STATE.—In the case

17 of a species that is listed as endangered or threat-
18 ened in 1 State, the Secretary shall publish a con-
19 servation objective under section 5 of the Act (as
20 amended by section 201) as expeditiously as prac-
21 ticable.

22 (b) EXISTING RECOVERY PLANS.—

23 (1) IN GENERAL.—A final recovery plan issued

24 under section 4(f) of the Endangered Species Act of
25 1973 (16 U.S.C. 1533(f)) (as in effect on the day

1 before the date of enactment of this Act) shall con-
2 tinue to apply to a species until a final revision of
3 the final recovery plan is published under this sub-
4 section. Not later than 90 days after the date of en-
5 actment of this Act, the Secretary shall publish a
6 list of all species that were determined to be endan-
7 gered species or threatened species under section 4
8 of the Endangered Species Act of 1973 (16 U.S.C.
9 1533) for which final recovery plans were issued
10 under section 4(f) of the Act (16 U.S.C. 1533(f))
11 (as in effect on the day before the date of enactment
12 of this Act).

13 (2) SPECIES LISTED IN MORE THAN 1 STATE.—
14 In the case of a species subject to a final recovery
15 plan described in paragraph (1) that is listed in
16 more than 1 State, the Secretary shall commence
17 the development of a conservation objective under
18 section 5 of the Endangered Species Act of 1973 (as
19 amended by section 201) as expeditiously as prac-
20 ticable, but not later than 2 years after the date of
21 enactment of this Act. Upon the commencement of
22 the development of a conservation objective, the
23 schedules established under section 5 of the Act
24 shall apply.

1 (3) SPECIES LISTED IN 1 STATE.—Not later
2 than 1 year after the date of enactment of this Act,
3 the Secretary shall publish a plan for the orderly re-
4 view of all final recovery plans described in para-
5 graph (1) that are not subject to paragraph (2). In
6 reviewing the plans, the Secretary shall first re-
7 view—

8 (A) those plans with respect to which con-
9 flicts between the conservation of a species and
10 development projects or other forms of eco-
11 nomic activity exist or are likely to exist; and

12 (B) those plans that have adverse social or
13 economic impacts on affected communities or
14 State or local governments.

15 (4) RESCISSION OF RECOVERY PLAN.—If the
16 Secretary publishes a conservation objective de-
17 scribed in section 5(e)(3) of the Act (as amended by
18 section 201) for any species subject to this sub-
19 section, the final recovery plan applicable to the spe-
20 cies shall be rescinded.

21 (5) PROHIBITION ON ADDITIONAL REQUIRE-
22 MENTS.—No increase in a population target or ob-
23 jective, other measurable criterion, or site-specific
24 management action may be required by the Sec-
25 retary or any other Federal agency in addition to

1 the requirements of a final recovery plan issued
2 under section 4(f) of the Endangered Species Act of
3 1973 (16 U.S.C. 1533(f)) (as in effect on the day
4 before the date of enactment of this Act), until such
5 time as a conservation objective has been published
6 under section 5 of the Act (as amended by section
7 201) in accordance with this subsection.

8 (c) EXISTING BIOLOGICAL OPINIONS.—In conjunc-
9 tion with the issuance of a conservation objective described
10 in section 5(e)(3) of the Act (as amended by section 201)
11 or a conservation plan under subsection (a) or (b), the
12 Secretary (as defined in section 3 of the Endangered Spe-
13 cies Act of 1973 (16 U.S.C. 1532)) shall review and re-
14 issue, in accordance with section 7 of the Act (as amended
15 by this Act), any written opinion of the Secretary issued
16 after January 1, 1995, that relates to the affected listed
17 species and was issued under section 7(b)(3) of the Act
18 (16 U.S.C. 1536(b)(3)) (as in effect on the day before the
19 date of enactment of this Act).

1 **SEC. 203. MAKING TECHNICAL AND CONFORMING AMEND-**
 2 **MENTS TO ENSURE THAT CONSERVATION OB-**
 3 **JECTIVES AND PLANS ARE THE FOCUS OF**
 4 **MANAGEMENT UNDER THE ENDANGERED**
 5 **SPECIES ACT OF 1973.**

6 (a) TABLE OF CONTENTS.—The table of contents in
 7 the first section (16 U.S.C. prec. 1531) is amended by
 8 striking the item relating to section 5 and inserting the
 9 following:

“Sec. 5. Coordination of species conservation efforts; species conservation plans.
 “Sec. 5A. Land acquisition.”.

10 (b) DEFINITIONS OF CONSERVATION OBJECTIVE
 11 AND PLAN.—Section 3 (16 U.S.C. 1532) is further
 12 amended by striking paragraph (4) (as redesignated by
 13 section 103(c)(1)) and inserting the following:

14 “(4) CONSERVATION OBJECTIVE; CONSERVA-
 15 TION PLAN.—The terms ‘conservation objective’ and
 16 ‘conservation plan’ (except when modified by ‘non-
 17 Federal’) mean a conservation objective and a con-
 18 servation plan, respectively, developed under section
 19 5.”.

20 (c) CRITICAL HABITAT DESIGNATIONS.—Section 4
 21 (16 U.S.C. 1533) (as amended by section 101) is further
 22 amended—

23 (1) in subsection (a), by striking paragraph (3);

24 (2) in subsection (b)—

1 (A) in paragraph (3), by striking subpara-
2 graph (D);

3 (B) in paragraph (5), by striking “deter-
4 mination, designation, or revision referred to in
5 subsection (a) (1) or (3),” and inserting “deter-
6 mination referred to in subsection (a)(1),”;

7 (C) in paragraph (6)—

8 (i) in subparagraph (A)—

9 (I) by striking “Register” and all
10 that follows through “(i) if” and in-
11 serting the following: “Register, if”;

12 (II) by striking “species, or a re-
13 vision of critical habitat,” and insert-
14 ing “species”;

15 (III) by striking clause (ii);

16 (IV) by striking “(I) a” and in-
17 serting the following:

18 “(i) a”;

19 (V) by striking “(II) a” and in-
20 serting the following:

21 “(ii) a”;

22 (VI) by striking “(III) notice”
23 and inserting the following:

24 “(iii) notice”;

1 (VII) by striking “(IV) notice”
2 and inserting the following:

3 “(iv) notice”; and

4 (VIII) in clause (iv) (as amended
5 by subclause (VII)), by striking
6 “based; or” and inserting “based.”;

7 (ii) in subparagraph (B)—

8 (I) in clause (i), by striking “or
9 revision concerned”; and

10 (II) in clause (iii), by striking “or
11 revision concerned, a finding that the
12 revision should not be made,”; and

13 (iii) by striking subparagraph (C);

14 and

15 (D) in paragraph (8), by striking “regula-
16 tion; and if such regulation designates or re-
17 vises critical habitat, such summary shall, to
18 the maximum extent practicable, also include a
19 brief description and evaluation of those activi-
20 ties (whether public or private) which, in the
21 opinion of the Secretary, if undertaken may ad-
22 versely modify such habitat, or may be affected
23 by such designation.” and inserting “regula-
24 tion.”;

25 (3) by striking subsection (f); and

1 (4) by redesignating subsections (g) through (j)
2 as subsections (f) through (i), respectively.

3 (d) SECRETARIAL GUIDELINES.—Section 4(g)(4) (16
4 U.S.C. 1533(h)(4)) (as redesignated by subsection (c)(4))
5 is amended by striking “recovery plans under subsection
6 (f) of this section” and inserting “conservation objectives
7 and conservation plans”.

8 (e) CONSULTATION PROCESS.—Section 7 (16 U.S.C.
9 1536) is amended—

10 (1) in subsection (a)—

11 (A) in the second sentence of paragraph
12 (1), by striking “All” and inserting “Except as
13 provided in subsections (e)(3), (n)(1), and
14 (o)(1)(B) of section 5, all”;

15 (B) in paragraph (2)—

16 (i) in the first sentence, by striking
17 “Each” and inserting “Except as provided
18 in subsections (e)(3), (n)(2), and (o)(1)(B)
19 of section 5, each”; and

20 (ii) by inserting after the first sen-
21 tence the following: “As provided in section
22 5(n)(2), each Federal agency may initiate
23 consultation with the Secretary to receive
24 guidance from the Secretary on the con-
25 sistency of an agency action with the con-

1 servation objective or conservation plan for
2 the species, with an incidental taking per-
3 mit for the species, or with a cooperative
4 management agreement concerning the
5 species.”; and

6 (C) in paragraph (3), by striking “project”
7 and inserting “project, that the project is incon-
8 sistent with the conservation objective or con-
9 servation plan, an incidental taking permit, or
10 a cooperative management agreement, for the
11 species,”; and

12 (2) in the first sentence of subsection (b)(3)(A),
13 by inserting after “detailing” the following: “wheth-
14 er the agency action is consistent with the conserva-
15 tion objective or plan, an incidental taking permit,
16 or a cooperative management agreement, or”.

17 (f) PROHIBITED ACTS.—Section 9(a) (16 U.S.C.
18 1538(a)) is amended by striking “sections 6(g)(2) and 10
19 of this Act” each place it appears in paragraphs (1) and
20 (2) and inserting “section 6(g)(2), subsections (n)(3) and
21 (o) of section 5, and section 10”.

22 (g) NON-FEDERAL CONSERVATION PLANS.—Section
23 10(a)(2) (16 U.S.C. 1539(a)(2)) is amended by inserting
24 “non-Federal” before “conservation plan” each place it
25 appears in subparagraphs (A) and (B).

1 **TITLE III—IMPROVING THE CON-**
 2 **SULTATION AND CONFERENC-**
 3 **ING PROCESSES FOR FED-**
 4 **ERAL AGENCY ACTIONS**

5 **SEC. 301. CLARIFYING THE CONSULTATION AND CON-**
 6 **FERENCING STANDARDS.**

7 (a) CONSULTATION AND CONFERENCING STAND-
 8 ARD.—Section 7(a) (16 U.S.C. 1536(a)) is amended—

9 (1) in the first sentence of paragraph (2), by
 10 striking “or result in the destruction or adverse
 11 modification of habitat of such species which is de-
 12 termined by the Secretary, after consultation as ap-
 13 propriate with affected States, to be critical,” and
 14 inserting “or destroy or adversely modify any habi-
 15 tat that is designated by the Secretary as critical
 16 habitat of the species in a manner that is likely to
 17 jeopardize the continued existence of the species,”;
 18 and

19 (2) in paragraph (4), by striking “or result in
 20 the destruction or adverse modification of critical
 21 habitat proposed to be designated for such species”
 22 and inserting “or to destroy or adversely modify any
 23 habitat that is proposed to be designated by the Sec-
 24 retary as critical habitat of such a species in a man-

1 ner that is likely to jeopardize the continued exist-
2 ence of the species”.

3 (b) JEOPARDY DEFINITION.—Section 3 (16 U.S.C.
4 1532) is further amended by inserting after paragraph
5 (13) (as redesignated by section 103(c)(1)) the following:

6 “(15) LIKELY TO JEOPARDIZE THE CONTINUED
7 EXISTENCE OF.—The term ‘likely to jeopardize the
8 continued existence of’, with respect to an action or
9 activity affecting an endangered species or a threat-
10 ened species, means an action or activity that sig-
11 nificantly diminishes the likelihood of the survival of
12 the species in the wild by significantly reducing the
13 numbers or distribution of the entire species.”.

14 **SEC. 302. IDENTIFYING WHEN CONSULTATION IS RE-**
15 **QUIRED.**

16 Section 7(a) (16 U.S.C. 1536(a)) is amended—

17 (1) in paragraph (2)—

18 (A) in the first sentence, by striking “shall,
19 in consultation with and with the assistance of
20 the Secretary, insure” and inserting “shall en-
21 sure”; and

22 (B) by inserting after the first sentence
23 the following: “In the case of any agency action
24 that is subject to this paragraph and that is
25 likely to significantly and adversely affect an

1 endangered species or a threatened species, the
 2 Federal agency shall fulfill the requirements of
 3 this paragraph in consultation with and with
 4 the assistance of the Secretary.”; and

5 (2) by adding at the end the following:

6 “(5) ACTIONS EXEMPT FROM CONSULTATION
 7 AND CONFERENCING.—Consultation and conferenc-
 8 ing under paragraphs (2) and (4) shall not be re-
 9 quired for any agency action that—

10 “(A) is consistent with the provisions of a
 11 final conservation plan under section 5(n) or a
 12 conservation objective described in section
 13 5(e)(3);

14 “(B) is consistent with a cooperative man-
 15 agement agreement or an incidental taking per-
 16 mit;

17 “(C) addresses a critical, imminent threat
 18 to public health or safety or a catastrophic nat-
 19 ural event; or

20 “(D) consists of routine maintenance or re-
 21 pair to a Federal or non-Federal project or fa-
 22 cility.

23 “(6) ACTIONS NOT CONSTITUTING TAKINGS.—
 24 An agency action shall not constitute a taking of a

1 species prohibited by this Act or any regulation is-
2 sued under this Act if the action is consistent with—

3 “(A) the actions provided for in a final
4 conservation plan under section 5(n) or a con-
5 servation objective described in section 5(e)(3);
6 or

7 “(B) a cooperative management agreement
8 or an incidental taking permit.”.

9 **SEC. 303. MAKING THE CONSULTATION DEADLINES BIND-**
10 **ING.**

11 Section 7(b)(1) (16 U.S.C. 1536(b)(1)) is amended—

12 (1) in subparagraph (A), by striking “initiated
13 or, subject to subparagraph (B), within such other
14 period of time as is mutually agreeable to the Sec-
15 retary and the Federal agency.” and inserting “initi-
16 ated by the Federal agency. The period may be ex-
17 tended by not more than 45 days by the Secretary
18 or head of the Federal agency by publication of no-
19 tice in the Federal Register that sets forth the rea-
20 sons for the extension. Consultation on an agency
21 action involving a permit or license applicant shall
22 be concluded not later than the earlier of—

23 “(i) 1 year after the date of submission of the
24 application to the Federal agency; or

1 “(ii) the end of the period established under
2 subparagraph (B).”;

3 (2) in subparagraph (B)—

4 (A) in the first sentence—

5 (i) by striking “In” and inserting
6 “Subject to subparagraph (A), in”; and

7 (ii) in clause (ii), by striking “150 or
8 more days” and inserting “on or after the
9 150th day but before the 210th day”; and

10 (B) by striking the second sentence; and

11 (3) by adding at the end the following:

12 “(C) EFFECT OF FAILURE TO TIMELY
13 CONCLUDE CONSULTATION.—If consultation is
14 not concluded and the written statement of the
15 Secretary required under paragraph (3)(A) is
16 not provided to the Federal agency by the appli-
17 cable deadline established under this paragraph,
18 the requirements of subsection (a)(2) shall be
19 deemed met and the Federal agency may pro-
20 ceed with the agency action.”.

21 **SEC. 304. ENHANCING APPLICANT PARTICIPATION.**

22 (a) NATURE OF PARTICIPATION.—Section 7 (16
23 U.S.C. 1536) is further amended—

24 (1) in subsection (a)(3), by inserting “with the
25 involvement of,” after “at the request of,”; and

1 (2) in subsection (b)(1), by adding after sub-
2 paragraph (C) (as added by section 303(3)) the fol-
3 lowing:

4 “(D) PARTICIPATION BY APPLICANT.—A
5 permit or license applicant shall be entitled to
6 participate fully in any consultation or con-
7 ferencing under this section with respect to any
8 agency action required for the granting of an
9 authorization or provision of funding to the ap-
10 plicant.”.

11 (b) DEFINITION OF APPLICANT.—Section 3 (16
12 U.S.C. 1532) is further amended by striking paragraph
13 (17) (as redesignated by section 103(c)(1)) and inserting
14 the following:

15 “(17) PERMIT OR LICENSE APPLICANT.—The
16 term ‘permit or license applicant’ means, with re-
17 spect to the consultation procedures established by
18 section 7, any person that requires authorization or
19 funding from a Federal agency as a prerequisite to
20 conducting an activity (including a party to a writ-
21 ten lease, right-of-way, license, contract to purchase
22 or provide a product or service, or other permit with
23 a Federal agency) that requires an action from the
24 agency to obtain the benefit of the activity.”.

1 **SEC. 305. SPECIFYING THE REASONABLE AND PRUDENT AL-**
 2 **TERNATIVES IDENTIFICATION PROCESS.**

3 (a) IDENTIFICATION.—Section 7(b)(3)(A) (16 U.S.C.
 4 1536(b)(3)(A)) is amended by striking the second sen-
 5 tence and inserting the following: “If the Secretary deter-
 6 mines that the action is likely to jeopardize the continued
 7 existence of the species as described in subsection (a), the
 8 Secretary shall suggest reasonable and prudent alter-
 9 natives (considering any reasonable and prudent alter-
 10 natives undertaken by other Federal agencies) that are
 11 consistent with subsection (a)(2) and that impose the least
 12 social and economic costs.”.

13 (b) DEFINITION.—Section 3 (16 U.S.C. 1532) is fur-
 14 ther amended by inserting after paragraph (19) (as redes-
 15 ignated by section 103(c)(1)) the following:

16 “(20) REASONABLE AND PRUDENT ALTER-
 17 NATIVE.—The term ‘reasonable and prudent alter-
 18 native’ means an alternative action identified under
 19 section 7(b)(3) during consultation on an agency ac-
 20 tion that—

21 “(A) can be implemented in a manner con-
 22 sistent with the intended purpose of the action;

23 “(B) can be implemented consistent with
 24 the scope of the legal authority and jurisdiction
 25 of the Federal agency;

1 “(C) is economically and technologically
2 feasible; and

3 “(D) the Secretary believes would avoid
4 being likely to jeopardize the continued exist-
5 ence of the species.”.

6 **SEC. 306. CLARIFYING THE RELATIONSHIP OF THE CON-**
7 **SULTATION REQUIREMENT WITH THE LAND**
8 **MANAGEMENT PLANNING REQUIREMENTS**
9 **FOR FEDERAL LANDS.**

10 Section 7(d) (16 U.S.C. 1536(d)) is amended—

11 (1) by striking “RESOURCES.—After”; and in-
12 serting the following: “RESOURCES.—

13 “(1) IN GENERAL.—Except as provided in para-
14 graph (2), after”; and

15 (2) by adding at the end the following:

16 “(2) RELATIONSHIP TO LAND MANAGEMENT
17 PLANNING REQUIREMENTS.—If the listing of a spe-
18 cies, or other procedure or decision related to a spe-
19 cies listed under section 4(c)(1), requires consulta-
20 tion under subsection (a)(2) on a land use plan or
21 land or resource management plan (or an amend-
22 ment to or revision of the plan) prepared under sec-
23 tion 202 of the Federal Land Policy and Manage-
24 ment Act of 1976 (43 U.S.C. 1712) or section 6 of
25 the Forest and Rangeland Renewable Resources

1 Planning Act of 1974 (16 U.S.C. 1604), the land
2 management agency implementing the plan may au-
3 thorize, fund, or carry out an agency action that is
4 consistent with the plan prior to the completion of
5 the consultation, if, under the procedures established
6 by this section, the head of the land management
7 agency responsible for the action determines or has
8 determined that the action—

9 “(A) is not likely to significantly and ad-
10 versely affect the species; or

11 “(B) is likely to significantly and adversely
12 affect the species, and the Secretary issues an
13 opinion on the action that finds that the ac-
14 tion—

15 “(i) is not likely to jeopardize the con-
16 tinued existence of the species; or

17 “(ii) is likely to jeopardize the contin-
18 ued existence of the species, and the agen-
19 cy agrees to a reasonable and prudent al-
20 ternative.”.

21 **SEC. 307. FURTHER CLARIFYING FEDERAL AGENCY RE-**
22 **SPONSIBILITIES.**

23 Section 7(a) (16 U.S.C. 1536(a)) is further amend-
24 ed—

(1) in the last sentence of paragraph (2), by striking “best scientific and commercial data available” and inserting “best reasonably obtainable scientific information, shall consider any opinion and any reasonable and prudent alternatives developed under subsection (b)(3)(A), and shall render the decision of the agency in a manner consistent with the obligations and responsibilities of the agency under each applicable law and treaty”; and

(2) by adding after paragraph (6) (as added by section 302(2)) the following:

“(7) RELATIONSHIP TO DUTIES UNDER OTHER LAWS.—

“(A) IN GENERAL.—The responsibilities of a Federal agency under this section shall not supersede duties assigned to the Federal agency by any other laws or by any treaties.

“(B) RESOLUTION OF CONFLICTS.—

“(i) REQUEST BY THE AGENCY.—If a Federal agency determines that the responsibilities and duties described in subparagraph (A) are in irreconcilable conflict, the action agency shall request the President to resolve the conflict.

1 “(ii) DECISION BY THE PRESIDENT.—

2 In determining a resolution to such a con-
 3 flict, the President shall consider and
 4 choose the course of action that best meets
 5 the public interest and, to the extent pos-
 6 sible, balances pursuit of the conservation
 7 objective or the purposes of the conserva-
 8 tion plan with pursuit of the purposes of
 9 the other laws or treaties. The authority
 10 assigned to the President by this subpara-
 11 graph may not be delegated to a member
 12 of the executive branch who has not been
 13 confirmed by the Senate.

14 “(8) MODIFICATION OF PROJECTS AND FACILI-
 15 TIES.—Any consultation and conferencing required
 16 under paragraphs (2) and (4) for an agency action
 17 that consists solely of a modification of a Federal,
 18 State, local government, or private project or facility
 19 shall be limited to the consideration of the effects
 20 that result from the modification that comprises the
 21 agency action.”.

22 **SEC. 308. CLARIFYING THE EFFECTS OF SECONDARY IM-**
 23 **PACTS.**

24 Section 7(b)(3)(A) (16 U.S.C. 1536(b)(3)(A)) is
 25 amended—

1 (1) by striking “(3)(A) Promptly” and inserting
2 the following:

3 “(3) WRITTEN OPINION OF SECRETARY.—

4 “(A) ISSUANCE.—

5 “(i) IN GENERAL.—Promptly”; and

6 (2) by adding at the end the following:

7 “(ii) SCOPE.—Unless required by law
8 other than subsections (a) through (d), the
9 Secretary, in any opinion or statement con-
10 cerning an agency action made under this
11 subsection (including any reasonable and
12 prudent alternative suggested under clause
13 (i) or any reasonable and prudent measure
14 specified under clause (ii) of paragraph
15 (4)), and the head of the Federal agency
16 proposing the agency action, may not re-
17 quire, provide for, or recommend the im-
18 position of any restriction or obligation on
19 the activity of any person that is not au-
20 thorized, funded, carried out, or otherwise
21 subject to regulation by the Federal agen-
22 cy. Nothing in this clause prevents the
23 Secretary from pursuing any appropriate
24 remedy under section 11 for any activity
25 prohibited by section 4(d) or 9.”.

1 **SEC. 309. REQUIRING RISK ASSESSMENT AND COST BENE-**
2 **FIT ANALYSES IN THE CONSULTATION PROC-**
3 **ESS.**

4 Section 7(b) (16 U.S.C. 1536(b)) is amended by add-
5 ing at the end the following:

6 “(5) RISK ASSESSMENT.—

7 “(A) IN GENERAL.—Any opinion of the
8 Secretary provided under this subsection shall
9 include a clear and concise statement that—

10 “(i) describes and, to the extent prac-
11 ticable, quantifies the risks to endangered
12 species, threatened species, or critical habi-
13 tat to be addressed by the opinion;

14 “(ii) compares the risks to endangered
15 species, threatened species, or critical habi-
16 tat to be addressed by the terms of the
17 opinion to other risks chosen by the Sec-
18 retary, including—

19 “(I) the risks to at least 3 other
20 species listed as endangered or threat-
21 ened under section 4(a); and

22 “(II) such other risks as the Sec-
23 retary considers appropriate;

24 “(iii) estimates—

25 “(I) the costs to the Federal
26 Government, State and local govern-

ments, the applicant, and the private sector of implementing and complying with the elements of the opinion described in clause (i); and

“(II) the benefits of the elements of the opinion described in clause (i); including both quantifiable measures of costs and benefits, to the fullest extent that the costs and benefits can be estimated, and qualitative measures that are difficult to quantify; and

“(iv) contains a certification by the Secretary that—

“(I) the analyses performed under clauses (i) through (iii) are based on the best reasonably obtainable scientific information;

“(II) the elements of the opinion described in clause (i) are likely to significantly reduce the risks to the endangered species, threatened species, or critical habitat addressed by the opinion;

“(III) there is no regulatory or administrative alternative that is al-

1 lowed by this Act that would achieve
2 an equivalent reduction in risk in a
3 more cost-effective manner, along with
4 a brief explanation of why other such
5 regulatory or administrative alter-
6 natives that were considered by the
7 Secretary were found to be less cost-
8 effective; and

9 “(IV) the elements of the opinion
10 described in clause (i) are likely to
11 produce benefits to endangered spe-
12 cies, threatened species, or critical
13 habitat that will justify the costs to
14 the Federal Government, State and
15 local governments, any applicant, and
16 the private sector of implementing
17 and complying with the elements.

18 “(B) NO EFFECT ON OTHER LAW OR AC-
19 TION.—Nothing in this paragraph—

20 “(i) affects any other Federal law;

21 “(ii) changes the factors that the Sec-
22 retary shall consider under this subsection
23 in issuing the opinion; or

1 “(iii) shall delay any action required
2 to meet a deadline imposed by statute or
3 a court.

4 “(C) NO EFFECT ON RIGHTS.—

5 “(i) IN GENERAL.—Except as pro-
6 vided in clause (ii), nothing in this section
7 creates any right to judicial review, or cre-
8 ates any right or benefit, substantive or
9 procedural, enforceable at law or equity by
10 a party against the United States, agen-
11 cies, instrumentalities, officers, or employ-
12 ees of the United States, or any other per-
13 son.

14 “(ii) EXCEPTION.—Each risk assess-
15 ment, cost-benefit analysis, certification,
16 and peer review report prepared under this
17 section shall be made part of the adminis-
18 trative review of any final agency action to
19 which it relates. If the elements of the
20 opinion described in subparagraph (A)(i)
21 are subject to judicial review under any
22 other law, the adequacy of the certification
23 prepared under subparagraph (A)(iv), and
24 any alleged failure to comply with this
25 paragraph, may not be used as independ-

1 ent grounds for affecting or invalidating
 2 the opinion, although the adequacy of com-
 3 pliance or any failure to comply may be
 4 considered by the court solely for the pur-
 5 pose of determining whether a final agency
 6 action is arbitrary and capricious or an
 7 abuse of discretion under section
 8 706(2)(A) of title 5, United States Code.”.

9 **SEC. 310. ELIMINATING THE ENDANGERED SPECIES COM-**
 10 **MITTEE.**

11 Section 7 (16 U.S.C. 1536) is amended—

12 (1) in the first sentence of subsection (a)(2), by
 13 striking “, unless such agency has been granted an
 14 exemption for such action by the Committee under
 15 subsection (h) of this section”;

16 (2) in subsection (c)—

17 (A) by striking “(1)”; and

18 (B) by striking paragraph (2);

19 (3) by striking subsection (e) and inserting the
 20 following:

21 “(e) EXEMPTIONS.—Notwithstanding any other pro-
 22 vision of this Act—

23 “(1) the Secretary shall grant an exemption
 24 from this Act for any activity if the Secretary of De-

1 fense determines that the exemption of the activity
2 is necessary for reasons of national security; and

3 “(2) the President may grant an exemption
4 from this Act for any area that the President has
5 declared to be a major disaster area under the Rob-
6 ert T. Stafford Disaster Relief and Emergency As-
7 sistance Act (42 U.S.C. 5121 et seq.) for any project
8 for the repair or replacement of a public facility sub-
9 stantially as the facility existed prior to the disaster
10 under section 405 or 406 of the Act (42 U.S.C.
11 5171 and 5172), if the President determines that
12 the project—

13 “(A) is necessary to prevent the recurrence
14 of such a natural disaster and to reduce the po-
15 tential loss of human life; and

16 “(B) involves an emergency situation that
17 does not allow the procedures of this Act (other
18 than this subsection) to apply.”; and

19 (4) by striking subsections (f) through (p).

1 **TITLE IV—ENSURING THAT THE**
 2 **COMPLIANCE PROCEDURES**
 3 **AND STANDARDS FOR NON-**
 4 **FEDERAL PERSONS ARE NOT**
 5 **MORE BURDENSOME THAN**
 6 **THE PROCEDURES AND**
 7 **STANDARDS APPLICABLE TO**
 8 **FEDERAL AGENCIES**

9 **SEC. 401. ESTABLISHING CONSULTATION PROCEDURES**
 10 **WITH RESPECT TO PRIVATE ACTIONS.**

11 (a) IN GENERAL.—Section 10 (16 U.S.C. 1539) is
 12 amended—

13 (1) in subsection (a)—

14 (A) in paragraph (2)(A), by striking “No”
 15 and inserting “Except as provided in paragraph
 16 (3), no”; and

17 (B) by adding at the end the following:

18 “(3) CONSULTATION.—

19 “(A) IN GENERAL.—Subject to such regu-
 20 lations as the Secretary may issue, any non-
 21 Federal person may initiate consultation with
 22 the Secretary on any prospective activity of the
 23 person—

24 “(i) to determine if the activity is con-
 25 sistent or inconsistent with a conservation

1 plan or conservation objective, an inciden-
2 tal taking permit, or a cooperative manage-
3 ment agreement; or

4 “(ii) if the person determines that the
5 activity is inconsistent, to determine
6 whether the activity is likely to jeopardize
7 the continued existence of an endangered
8 species or a threatened species, or to de-
9 stroy or adversely modify the designated
10 critical habitat of the species in a manner
11 that is likely to jeopardize the continued
12 existence of the species.

13 “(B) DURATION OF CONSULTATION.—A
14 consultation under subparagraph (A) shall con-
15 clude not later than 90 days after the date on
16 which the consultation is initiated, or not later
17 than such other date as is mutually agreeable
18 to the Secretary and the person initiating the
19 consultation.

20 “(C) WRITTEN OPINION OF SECRETARY.—

21 “(i) IN GENERAL.—As soon as prac-
22 ticable after the conclusion of consultation
23 under subparagraph (A), the Secretary
24 shall provide to the person initiating the
25 consultation a written statement setting

1 forth the opinion of the Secretary, and a
2 summary of the information on which the
3 opinion is based, describing in detail
4 whether the prospective activity is consist-
5 ent with the documents referred to in sub-
6 paragraph (A)(i) and how the prospective
7 activity affects the species or the critical
8 habitat of the species as described in sub-
9 paragraph (A)(ii).

10 “(ii) DETERMINATION OF NO JEOP-
11 ARDY.—If the Secretary determines under
12 clause (i) that the activity is not likely to
13 jeopardize the continued existence of the
14 species as described in subparagraph
15 (A)(ii), the Secretary shall provide to the
16 person initiating the consultation a state-
17 ment that the proposed activity will not
18 jeopardize the continued existence of the
19 species.

20 “(iii) DETERMINATION OF LIKELY
21 JEOPARDY.—If the Secretary determines
22 under clause (i) that the activity is likely
23 to jeopardize the continued existence of the
24 species as described in subparagraph
25 (A)(ii), the Secretary shall suggest the rea-

1 sonable and prudent alternatives that the
2 Secretary determines would not be likely to
3 jeopardize the continued existence of the
4 species and that can be taken by the per-
5 son initiating the consultation in carrying
6 out the activity.

7 “(D) ISSUANCE OF PERMIT.—After the
8 conclusion of consultation under subparagraph
9 (A), if the person initiating the consultation so
10 requests, the Secretary shall issue a permit
11 under paragraph (1)(B) to the person if the
12 Secretary determines that—

13 “(i)(I) the activity of the person initi-
14 ating the consultation is not likely to jeop-
15 ardize the continued existence of the spe-
16 cies as described in subparagraph (A)(ii);
17 or

18 “(II) the person has accepted a rea-
19 sonable and prudent alternative offered by
20 the Secretary under subparagraph (C)(iii),
21 in which case the Secretary shall issue a
22 permit requiring the alternative; and

23 “(ii)(I) no taking of an endangered
24 species or a threatened species incidental
25 to the activity or alternative will occur; or

1 “(II) the taking of an endangered spe-
2 cies or a threatened species incidental to
3 the activity or alternative may occur but is
4 not likely to jeopardize the continued exist-
5 ence of the species as described in sub-
6 paragraph (A)(ii).

7 “(E) REVOCATION OF PERMIT.—The Sec-
8 retary shall revoke a permit issued under this
9 paragraph if the Secretary determines that the
10 permittee is not complying with the terms and
11 conditions of the permit.

12 “(F) PERMITS FOR INCIDENTAL TAK-
13 ING.—If a determination is made under sub-
14 paragraph (D)(ii)(II) that an incidental taking
15 may occur, a permit issued under paragraph
16 (1)(B) shall—

17 “(i) describe the impact of the inci-
18 dental taking on the species;

19 “(ii) specify the reasonable and pru-
20 dent measures that the Secretary considers
21 necessary or appropriate to minimize the
22 impact; and

23 “(iii) specify the terms and conditions
24 that the person initiating the consultation

1 shall comply with to implement the meas-
2 ures.

3 “(G) INTERIM ACTIONS BY PERSON.—
4 After the initiation of consultation under sub-
5 paragraph (A), the person initiating the con-
6 sultation may not make any irreversible or irre-
7 trievable commitment of resources with respect
8 to the activity that is the subject of the con-
9 sultation if the commitment has the effect of
10 foreclosing the formulation or implementation
11 of any reasonable and prudent alternative or
12 measure that would not be likely to have an ef-
13 fect described in subparagraph (A)(ii).

14 “(H) BIOLOGICAL AND ENVIRONMENTAL
15 ASSESSMENTS.—Any consultation initiated
16 under subparagraph (A), and the activity that
17 is the subject of the consultation, shall not be
18 subject to section 7(c) of this Act or section
19 102(2) of the National Environmental Policy
20 Act of 1969 (42 U.S.C. 4332(2)).

21 “(I) TAKINGS.—Notwithstanding section
22 4(d) and subparagraphs (B) and (C) of section
23 9(a)(1) of this Act and sections 101 and 102 of
24 the Marine Mammal Protection Act of 1972 (16
25 U.S.C. 1371 and 1372), a taking of a species

1 in the course of an action of a person that is
 2 the subject of a written opinion provided to the
 3 person by the Secretary under subparagraph
 4 (C)(ii) shall not be considered to be a prohib-
 5 ited taking under this Act if—

6 “(i) the Secretary determines that the
 7 action is not likely to jeopardize the contin-
 8 ued existence of the species under subpara-
 9 graph (C)(ii); or

10 “(ii) the taking is in compliance with
 11 the terms and conditions of a permit is-
 12 sued in accordance with subparagraph
 13 (D).”; and

14 (2) in the first sentence of subsection (c), by
 15 striking “this section” and inserting “subsections
 16 (a)(2) and (b)”.
 17 (b) DEFINITIONS.—

18 (1) INCIDENTAL TAKING PERMIT.—Section 3
 19 (16 U.S.C. 1532) is further amended by inserting
 20 after paragraph (13) (as redesignated by section
 21 103(c)(1)) the following:

22 “(14) INCIDENTAL TAKING PERMIT.—The term
 23 ‘incidental taking permit’ means a permit issued
 24 under section 10(a)(1)(B).”.

1 (2) NON-FEDERAL PERSON.—Section 3 (16
2 U.S.C. 1532) is further amended by inserting after
3 paragraph (15) (as added by section 301(b)) the fol-
4 lowing:

5 “(16) NON-FEDERAL PERSON.—The term ‘non-
6 Federal person’ means a person other than an offi-
7 cer, employee, agent, department, or instrumentality
8 of the Federal Government or a foreign government,
9 acting in the official capacity of the person.”.

10 **SEC. 402. DEFINING THE TAKING PROHIBITION IN ACCORD-**
11 **ANCE WITH THE INTENT OF CONGRESS.**

12 Section 3 (16 U.S.C. 1532) is further amended by
13 striking paragraph (25) (as redesignated by section
14 103(c)(1)) and inserting the following:

15 “(25) TAKE.—

16 “(A) IN GENERAL.—The term ‘take’
17 means to harass, harm, pursue, hunt, shoot,
18 wound, kill, trap, capture, or collect, or to at-
19 tempt to engage in that conduct.

20 “(B) HARM.—In subparagraph (A), the
21 term ‘harm’ means to take a direct action
22 against any member of an endangered species
23 of fish or wildlife that actually injures or kills
24 a member of the species.”.

1 **SEC. 403. CLARIFYING THE APPLICATION OF TAKING PRO-**
2 **HIBITIONS.**

3 Section 9(a) (16 U.S.C. 1538(a)) is amended—

4 (1) in paragraph (1), by striking “Except as
5 provided in sections 6(g)(2) and 10 of this Act,” and
6 inserting “Except as provided in paragraph (3) and
7 sections 6(g)(2) and 10,”; and

8 (2) by adding at the end the following:

9 “(3) PERMITTED TAKINGS.—An activity of a
10 non-Federal person is deemed not to constitute a
11 taking of a species if the activity—

12 “(A) is consistent with the provisions of a
13 final conservation plan or conservation objec-
14 tive;

15 “(B) complies with the terms and condi-
16 tions of an incidental taking permit or a cooper-
17 ative management agreement;

18 “(C) addresses a critical, imminent threat
19 to public health or safety or a catastrophic nat-
20 ural event; or

21 “(D) is incidental to, and not the purpose
22 of, the carrying out of an otherwise lawful ac-
23 tivity that occurs within an area of the terri-
24 torial sea or exclusive economic zone established
25 by Proclamation Numbered 5030, dated March
26 10, 1983, that is not designated as critical

1 habitat under section 5(m), and the affected
2 species is not a species of fish.”.

3 **SEC. 404. AUTHORIZING THE ISSUANCE OF GENERAL PER-**
4 **MITTS.**

5 Section 10(a) (16 U.S.C. 1539(a)) is further amend-
6 ed by adding after paragraph (3) (as added by section
7 401(a)(1)(B)) the following:

8 “(4) GENERAL PERMITS.—

9 “(A) IN GENERAL.—After providing notice
10 and opportunity for public hearing, the Sec-
11 retary may issue a general permit under para-
12 graph (1)(B) on a county, parish, State, re-
13 gional, or nationwide basis for any category of
14 activities that may affect a species that is in-
15 cluded in a list published under section 4(c)(1)
16 if the Secretary determines that the activities in
17 the category are similar in nature, will cause
18 only minimal adverse effects on the species if
19 performed separately, and will have only mini-
20 mal cumulative adverse effects on the species
21 generally. A general permit issued under this
22 paragraph shall specify the requirements and
23 standards that apply to an activity authorized
24 by the general permit.

“(B) DURATION.—A general permit issued under this paragraph shall be effective for a period to be specified by the Secretary, but not to exceed the 5-year period that begins on the date of issuance of the permit.

“(C) REVOCATION OR MODIFICATION.—The Secretary may revoke or modify a general permit if, after providing notice and opportunity for public hearing, the Secretary determines that the activities authorized by the general permit have a greater than minimal adverse effect on a species that is included in a list published under section 4(c)(1) or that the activities are more appropriately authorized by individual permits issued under paragraph (1) or (3).”.

**SEC. 405. IMPROVING THE NON-FEDERAL CONSERVATION
PLANNING PROCESS.**

(a) SCOPE OF NON-FEDERAL CONSERVATION PLAN.—Section 10(a)(2) (16 U.S.C. 1539(a)(2)) is amended—

(1) by redesignating subparagraph (C) as subparagraph (H); and

(2) by inserting after subparagraph (B) the following:

1 “(C) SCOPE OF PERMIT.—The Secretary
2 may not require the applicant, as a condition of
3 processing the application or issuing the permit,
4 to expand the application to include land, an in-
5 terest in land, or a proprietary water right not
6 owned by the applicant or to address a species
7 other than the species for which the application
8 is made, unless the Secretary determines that
9 the requirement will not appreciably increase
10 the time or cost of processing the application or
11 the cost of implementing the permit.

12 “(D) ENVIRONMENTAL ASSESSMENTS.—
13 The preparation and approval of a non-Federal
14 conservation plan and issuance of a permit
15 under paragraph (1)(B) shall not be subject to
16 section 102(2) of the National Environmental
17 Policy Act of 1969 (42 U.S.C. 4332(2)).”.

18 (b) NO SURPRISES POLICY.—Section 10(a)(2) (16
19 U.S.C. 1539(a)(2)) is further amended by inserting after
20 subparagraph (D) (as added by subsection (a)(2)) the fol-
21 lowing:

22 “(E) PROHIBITION ON ADDITIONAL MEAS-
23 URES.—

24 “(i) IN GENERAL.—Except under ex-
25 traordinary circumstances determined

1 under clause (ii), no additional measures to
2 minimize and mitigate impacts on a species
3 that is a subject of a permit issued under
4 paragraph (1)(B) shall be required of a
5 permittee that is in compliance with the
6 permit. With respect to any species that is
7 a subject of such a permit, under no cir-
8 cumstance shall a permittee in compliance
9 with the permit be required to make any
10 additional payment for any purpose, or ac-
11 cept any additional restriction on any par-
12 cel of land available for development or
13 land management under the permit, with-
14 out the consent of the permittee.

15 “(ii) EXTRAORDINARY CIR-
16 CUMSTANCES.—

17 “(I) IN GENERAL.—The Sec-
18 retary shall have the burden of dem-
19 onstrating that an extraordinary cir-
20 cumstance under clause (i) exists,
21 based on the best reasonably obtain-
22 able scientific information.

23 “(II) FACTORS.—The Secretary
24 shall establish, by regulation, the fac-
25 tors to be considered in making the

1 determination whether an extraor-
2 dinary circumstance under clause (i)
3 exists.”.

4 (c) FEDERAL COST-SHARING.—Section 10(a)(2) (16
5 U.S.C. 1539(a)(2)) is further amended by inserting after
6 subparagraph (E) (as added by subsection (b)) the follow-
7 ing:

8 “(F) FEDERAL COST-SHARING.—

9 “(i) IN GENERAL.—The Secretary
10 shall pay 50 percent of the direct costs of
11 implementing the terms and conditions of
12 the permit, except that, at the request of
13 the applicant, the Secretary may adjust the
14 percentage of the Federal contribution to a
15 higher or lower share. To the maximum ex-
16 tent practicable, the Secretary shall pay
17 the sums directly (in lieu of reimburse-
18 ment) to the permittee.

19 “(ii) EFFECT OF FEDERAL
20 NONPAYMENT.—If the contribution re-
21 quired by clause (i) is not made, the appli-
22 cation of the applicable term or condition
23 shall be suspended until such time as the
24 full contribution is made. If the suspended
25 term or condition includes a conservation

1 easement or other instrument restricting
2 title to the property of the permittee,
3 nonpayment of the full contribution for a
4 period of more than 4 consecutive years
5 shall result in the nullification of the pre-
6 viously granted restriction on title.

7 “(iii) LOANS.—The Secretary may not
8 consider a loan to the permittee in cal-
9 culating the contribution required by
10 clause (i).

11 “(iv) RECOVERED COSTS.—The Sec-
12 retary may not consider as a portion of the
13 contribution required by clause (i) any
14 costs to the Federal Government that are
15 recovered through rates for the sale or
16 transmission of power or water.

17 “(v) IN-KIND CONTRIBUTIONS.—The
18 permittee may include in-kind contribu-
19 tions in calculating the appropriate share
20 of the costs of the permittee.”.

21 (d) INTERIM PERMITS.—Section 10(a)(2) (16 U.S.C.
22 1539(a)(2)) is further amended by inserting after sub-
23 paragraph (F) (as added by subsection (c)) the following:

24 “(G) INTERIM PERMITS.—

1 “(i) IN GENERAL.—For such activities
2 as the Secretary determines will not appre-
3 ciably reduce the chances of survival of a
4 species, the Secretary may issue an interim
5 permit to any applicant for a permit under
6 this section that provides evidence of ap-
7 propriate interim measures that—

8 “(I) will minimize and mitigate
9 any impacts of any incidental taking
10 that may be associated with the activ-
11 ity proposed for permitting; and

12 “(II) are to be performed while
13 the underlying permit application is
14 being considered under this section.

15 “(ii) CONTENTS.—An interim permit
16 issued under clause (i)—

17 “(I) shall specifically state the
18 types of activities that are authorized
19 to be carried out under the interim
20 permit;

21 “(II) shall not create any right to
22 the issuance of a permit under this
23 section;

1 “(III) shall expire on the date of
2 the granting or denial of the underly-
3 ing permit application; and

4 “(IV) may be revoked by the Sec-
5 retary upon failure to comply with
6 any term of the interim permit.”.

7 (e) MULTIPLE SPECIES NON-FEDERAL CONSERVA-
8 TION PLANS.—Section 10 (16 U.S.C. 1539) is amended
9 by adding at the end the following:

10 “(k) MULTIPLE SPECIES NON-FEDERAL CONSERVA-
11 TION PLANS.—

12 “(1) DEVELOPMENT.—The Secretary may as-
13 sist a non-Federal person in the development of a
14 plan, to be known as a ‘multiple species non-Federal
15 conservation plan’, for the conservation of—

16 “(A) any species with respect to which a
17 finding is made and a status review is com-
18 menced under section 4(b)(3)(A); and

19 “(B) any other species that—

20 “(i) inhabits the area covered by the
21 plan; and

22 “(ii) is designated in the plan or is
23 within a taxonomic group designated in the
24 plan.

1 “(2) ISSUANCE OF PERMITS.—The Secretary
2 may issue a permit under subsection (a)(1)(B) au-
3 thorizing a taking described in section 9(a)(1)(B) of
4 a species for which a multiple species non-Federal
5 conservation plan is developed under this subsection,
6 if the Secretary, after providing opportunity for pub-
7 lic comment on the plan—

8 “(A) determines that the plan specifies the
9 information described in subsection (a)(2)(A);

10 “(B) makes the findings described in sub-
11 section (a)(2)(B) with respect to the permit ap-
12 plication and the plan; and

13 “(C) receives such assurances as the Sec-
14 retary may require that the plan will be imple-
15 mented.

16 “(3) EFFECT OF LISTING OF SPECIES.—A mul-
17 tiple species non-Federal conservation plan developed
18 under this subsection and a permit issued with re-
19 spect to the plan shall remain in effect and shall not
20 be required to be amended if a species to which the
21 plan and permit apply is determined to be an endan-
22 gered species or a threatened species under section
23 4.”.

1 **SEC. 406. ENCOURAGING EXCHANGES TO PROTECT HABITAT ON NON-FEDERAL LANDS.**
2

3 Section 5A (as redesignated by section 201(a)) is further amended by adding at the end the following:
4

5 “(c) EXCHANGES.—

6 “(1) IN GENERAL.—In accordance with subsection (a), the Secretary of the Interior and the
7 Secretary of Agriculture shall encourage exchanges
8 of lands, waters, or interests in land or water within
9 the jurisdiction of each Secretary (other than units
10 of the National Park System and units of the National
11 Wilderness Preservation System) for lands,
12 waters, or interests in land or water that are not in
13 Federal ownership and that are affected by this Act.
14

15 “(2) TIMING OF EXCHANGES.—An exchange
16 under this subsection may be made if the Secretary
17 of the Interior or the Secretary of Agriculture determines, without a formal appraisal, that the lands to
18 be exchanged are of approximately equal value.
19

20 “(3) ENVIRONMENTAL ASSESSMENT.—An environmental assessment shall be the only document
21 under section 102(2) of the National Environmental
22 Policy Act of 1976 (16 U.S.C. 4332(2)) that shall
23 be prepared with respect to any exchange under this
24 subsection.
25

1 “(4) EXPEDITIOUS EXCHANGE DECISIONS.—An
2 exchange under this subsection shall be processed as
3 expeditiously as practicable. The Secretary of the In-
4 terior or the Secretary of Agriculture shall periodi-
5 cally provide information to the non-Federal land-
6 owner on the status of the exchange.

7 “(5) APPLICABLE LAW.—The Secretary of the
8 Interior and the Secretary of Agriculture shall proc-
9 ess exchanges under this subsection in accordance
10 with applicable laws that are consistent with this
11 subsection.

12 “(d) VALUATION.—Any land, water, or interest in
13 land or water to be acquired by the Secretary or the Sec-
14 retary of Agriculture by purchase, exchange, donation, or
15 otherwise under this section shall be valued as if the land,
16 water, or interest in land or water were not subject to any
17 restriction on use under this Act imposed after the date
18 of acquisition by the current owner of the land, water, or
19 interest in land or water.”.

1 **TITLE V—PROVIDING FOR HABI-**
 2 **TAT CONSERVATION INCEN-**
 3 **TIVE PROGRAMS**

4 **SEC. 501. PROVIDING FOR COOPERATIVE MANAGEMENT**
 5 **AGREEMENTS.**

6 (a) IN GENERAL.—Section 6 (16 U.S.C. 1535) is
 7 amended by striking subsection (b) and inserting the fol-
 8 lowing:

9 “(b) COOPERATIVE MANAGEMENT AGREEMENTS.—

10 “(1) IN GENERAL.—On the request of any
 11 State or group of States, political subdivision of a
 12 State, or local government having authority, control,
 13 or ownership over the area affected by any deter-
 14 mination that a species is an endangered species or
 15 a threatened species, any proposed determination, or
 16 any proposed candidacy for determination, the Sec-
 17 retary may enter into a cooperative management
 18 agreement that shall govern the administration and
 19 management of each area that the Secretary identi-
 20 fies as habitat for the affected species that is within
 21 the authority, control, or ownership of the request-
 22 ing party.

23 “(2) NOTIFICATION.—Not later than 30 days
 24 after the submission of a request to enter into a co-
 25 operative management agreement, the person sub-

1 mitting the request shall provide notice of the re-
2 quest to any non-Federal person or Federal power
3 marketing administration that would be subject to
4 the proposed cooperative management agreement.

5 “(3) SPECIES ASSESSMENT.—On submission of
6 a request to enter into a cooperative management
7 agreement, the requesting party shall conduct an as-
8 sessment of the affected species in accordance with
9 section 5(d) and submit the assessment to the Sec-
10 retary. On the receipt of the assessment, the Sec-
11 retary may approve the assessment, or make a de-
12 termination that the assessment is deficient and re-
13 quest the party to review and revise the assessment
14 not later than 30 days after the date of issuance of
15 the determination. If, on resubmission, the Secretary
16 determines that the assessment remains deficient, or
17 if no resubmission is made, the Secretary may con-
18 duct an independent assessment of the affected spe-
19 cies in accordance with section 5(d).

20 “(4) SUBMISSION OF AGREEMENT.—After com-
21 pletion of the assessment of the affected species
22 under paragraph (3), the requesting party shall de-
23 velop, and submit to the Secretary, a proposed coop-
24 erative management agreement.

1 “(5) PUBLICATION IN FEDERAL REGISTER.—

2 The Secretary shall publish in the Federal Reg-
3 ister—

4 “(A) a notice of availability of, and a re-
5 quest for public comment on, a proposed coop-
6 erative management agreement; and

7 “(B) a notice of availability of each cooper-
8 ative management agreement entered into by
9 the Secretary.

10 “(6) PUBLIC HEARING.—The Secretary shall
11 hold a public hearing on a proposed cooperative
12 management agreement in each county or parish to
13 which the proposed agreement applies.

14 “(7) CONSIDERATION OF PUBLIC COMMENT.—

15 “(A) IN GENERAL.—Before entering into a
16 cooperative management agreement, the Sec-
17 retary shall consider and weigh carefully all in-
18 formation—

19 “(i) received in response to the re-
20 quest for comment published under para-
21 graph (5)(A); and

22 “(ii) presented as testimony in each
23 hearing held under paragraph (6).

24 “(B) PUBLICATION OF RESPONSES.—The
25 notice of availability of a cooperative manage-

1 ment agreement required to be published under
2 paragraph (5)(B) shall include the response of
3 the Secretary to all information referred to in
4 subparagraph (A) that is received or presented
5 with respect to the agreement.

6 “(8) APPROVAL OF AGREEMENT.—

7 “(A) IN GENERAL.—Not later than 120
8 days after the submission of a proposed cooper-
9 ative management agreement under paragraph
10 (4), the Secretary shall determine whether the
11 proposed agreement—

12 “(i) is in accordance with this sub-
13 section; and

14 “(ii) will promote the conservation of
15 the species to which the proposed agree-
16 ment applies.

17 “(B) CRITERIA.—The Secretary shall ap-
18 prove and enter into a proposed cooperative
19 management agreement if the Secretary deter-
20 mines that—

21 “(i) the requesting party has suffi-
22 cient authority under law to implement
23 and carry out the terms of the agreement;

1 “(ii) the agreement defines an area
2 that serves as habitat for the species to
3 which the agreement applies;

4 “(iii) the agreement provides for the
5 administration and management of the
6 area and adequately regulates activities oc-
7 curring in the area that may not otherwise
8 promote the conservation of the species to
9 which the agreement applies;

10 “(iv) the agreement promotes the con-
11 servation of the species to which the agree-
12 ment applies by committing Federal or
13 non-Federal efforts to the conservation;

14 “(v) the term of the agreement is of
15 sufficient duration to carry out the agree-
16 ment; and

17 “(vi) the agreement is adequately
18 funded to carry out the agreement.

19 “(C) ENVIRONMENTAL ASSESSMENTS.—
20 The preparation, approval, and entering into of
21 a cooperative management agreement under
22 this subsection shall not be subject to section
23 102(2) of the National Environmental Policy
24 Act of 1969 (42 U.S.C. 4332(2)).

1 “(9) CRITICAL HABITAT.—As a term of a coop-
2 erative management agreement, the Secretary
3 may—

4 “(A) designate as critical habitat under
5 section 5(m) any habitat within the geographic
6 area covered by the agreement that is consid-
7 ered to be critical habitat as of the date of en-
8 tering into the agreement; or

9 “(B) revise a critical habitat designation
10 under section 5(m).

11 “(10) EFFECT OF LISTING OF SPECIES.—A co-
12 operative management agreement entered into under
13 this subsection shall remain in effect and shall not
14 be required to be amended if a species to which the
15 agreement applies is determined to be an endan-
16 gered species or a threatened species under section
17 4.

18 “(11) APPLICABILITY OF CERTAIN PROVI-
19 SIONS.—

20 “(A) IN GENERAL.—Sections 5 and 7 shall
21 not apply to such activities of a person that is
22 a party to a cooperative management agreement
23 as are conducted in accordance with the agree-
24 ment.

1 “(B) INTENTIONAL OR KNOWING VIOLA-
2 TIONS.—An intentional or knowing violation of
3 a cooperative management agreement, or a law
4 implementing a cooperative management agree-
5 ment, shall be deemed a violation of this Act.

6 “(12) VIOLATIONS OF AGREEMENTS.—

7 “(A) NOTIFICATION BY THE SEC-
8 RETARY.—If the Secretary determines after
9 public hearing and opportunity for comment
10 that a party to a cooperative management
11 agreement is not administering or acting in ac-
12 cordance with the agreement, the Secretary
13 shall notify the party.

14 “(B) FAILURE TO TAKE CORRECTIVE AC-
15 TION.—If a party that is notified under sub-
16 paragraph (A) fails to take appropriate correc-
17 tive action within a period of time determined
18 by the Secretary to be reasonable (not to exceed
19 90 days after the date of the notification)—

20 “(i) the Secretary shall rescind the
21 entire cooperative management agreement
22 or the applicability of the agreement to the
23 party that is the subject of the notification;
24 and

1 “(ii) beginning on the date of the re-
2 scission—

3 “(I) the entire agreement shall
4 not be effective, or the agreement
5 shall not be effective with respect to
6 the party, whichever is appropriate;
7 and

8 “(II) sections 5 and 7 shall apply
9 to activities of the party.

10 “(13) FEDERAL COST-SHARING.—

11 “(A) IN GENERAL.—The Secretary shall
12 pay 50 percent of the direct costs of implement-
13 ing the terms and conditions of a cooperative
14 management agreement, including any costs in-
15 curred by a party to the agreement, non-Fed-
16 eral person, or Federal power marketing admin-
17 istration. To the maximum extent practicable,
18 the sums paid by the Secretary shall be paid di-
19 rectly (in lieu of reimbursement) to the party,
20 person, or administration.

21 “(B) EFFECT OF FEDERAL
22 NONPAYMENT.—If the contribution required by
23 subparagraph (A) is not made, the applicable
24 term or condition shall be suspended until such
25 time as the full contribution is made. If the sus-

1 pended term or condition includes a conserva-
 2 tion easement or other instrument restricting
 3 title to property, nonpayment of the full con-
 4 tribution for a period of more than 4 consecu-
 5 tive years shall result in nullification of the pre-
 6 viously granted restriction on title.

7 “(C) LOANS.—The Secretary may not con-
 8 sider a loan to the party, person, or administra-
 9 tion in calculating the contribution required by
 10 subparagraph (A).

11 “(D) RECOVERED COSTS.—The Secretary
 12 may not consider as a portion of the contribu-
 13 tion required by subparagraph (A) any costs to
 14 the Federal Government that are recovered
 15 through rates for the sale or transmission of
 16 power or water.

17 “(E) IN-KIND CONTRIBUTIONS.—The
 18 party, person, or administration may include in-
 19 kind contributions in calculating the appro-
 20 priate share of the costs of the party.”.

21 (b) DEFINITION OF COOPERATIVE MANAGEMENT
 22 AGREEMENT.—Section 3 (16 U.S.C. 1532) is further
 23 amended by inserting after paragraph (5) (as redesignated
 24 by section 103(c)(1)) the following:

1 “(6) COOPERATIVE MANAGEMENT AGREE-
 2 MENT.—The term ‘cooperative management agree-
 3 ment’ means an agreement entered into under sec-
 4 tion 6(b).”.

5 (c) CONFORMING AMENDMENTS.—

6 (1) Section 6 (16 U.S.C. 1535) is amended by
 7 striking the section heading and inserting the follow-
 8 ing:

9 **“SEC. 6. COOPERATION WITH NON-FEDERAL PERSONS.”.**

10 (2) The table of contents in the first section (16
 11 U.S.C. prec. 1531) is amended by striking the item
 12 relating to section 6 and inserting the following:

“Sec. 6. Cooperation with non-Federal persons.”.

13 **SEC. 502. PROVIDING FOR HABITAT RESERVE GRANTS.**

14 Section 6(b) (16 U.S.C. 1535(b)) (as amended by
 15 section 501(a)) is further amended by adding at the end
 16 the following:

17 “(14) HABITAT RESERVE GRANTS.—

18 “(A) IN GENERAL.—The Secretary may
 19 provide a grant to a non-Federal person (other
 20 than an officer, employee, or agent (acting in
 21 the official capacity of the agent) of, or a de-
 22 partment or instrumentality of, a State, munici-
 23 pality, or political subdivision of a State, or a
 24 State, municipality, or political subdivision of a
 25 State) for the purpose of preserving habitat for

1 any species that is determined under section 4
2 to be an endangered species or a threatened
3 species.

4 “(B) CRITERIA FOR PROVISION OF
5 GRANTS.—The Secretary may provide a grant
6 under this paragraph if the Secretary deter-
7 mines that—

8 “(i) the property for which the grant
9 is provided contains habitat that signifi-
10 cantly contributes to the protection of the
11 population of the species;

12 “(ii) the property has been dedicated
13 to species protection for a period of time
14 that has been sufficient to significantly
15 contribute to the protection of the popu-
16 lation of the species; and

17 “(iii) the preservation of the habitat
18 advances the interest of species protection.

19 “(C) TRANSFERABILITY OF GRANTS.—A
20 grant made under this paragraph shall be
21 transferable to subsequent owners of the prop-
22 erty for which the grant is provided.”.

1 **TITLE VI—OTHER AMENDMENTS**
2 **MAKING THE ENDANGERED**
3 **SPECIES ACT OF 1973 MORE**
4 **EFFECTIVE AND LESS BUR-**
5 **DENSOME**

6 **SEC. 601. PROVIDING GUIDANCE FOR THE RELEASE OF EX-**
7 **PERIMENTAL POPULATIONS.**

8 Section 10(j) (16 U.S.C. 1539(j)) is amended—

9 (1) in paragraph (2)—

10 (A) in subparagraph (B)—

11 (i) by inserting “and the precise
12 boundaries of the geographic area for the
13 release” after “the population”; and

14 (ii) by inserting “whether the release
15 is in the public interest and” after “infor-
16 mation,”; and

17 (B) in subparagraph (C)—

18 (i) in clause (i), by striking “and” at
19 the end;

20 (ii) by redesignating clause (ii) as
21 clause (iii); and

22 (iii) by inserting after clause (i) the
23 following:

24 “(ii) for the purposes of sections 4(d) and
25 9(a)(1)(B), any member of an experimental popu-

1 lation found outside the geographic area in which
2 the population is released shall not be treated as a
3 threatened species if the member poses a threat to
4 the welfare of the public; and”;

5 (2) by redesignating paragraph (3) as para-
6 graph (4); and

7 (3) by inserting after paragraph (2) the follow-
8 ing:

9 “(3) REQUIREMENTS FOR RELEASES.—In au-
10 thorizing the release of a population under para-
11 graph (2), the Secretary shall require that—

12 “(A) to the maximum extent practicable,
13 the release occurs only in a unit of the National
14 Park System or the National Wildlife Refuge
15 System;

16 “(B) a release outside a unit occurs only in
17 an area that has been identified as a candidate
18 site for release of the population in a conserva-
19 tion plan for the species;

20 “(C) in the case of a release outside a unit,
21 measures to protect the safety and welfare of
22 the public and domestic animals and the fund-
23 ing for the measures are identified in the regu-
24 lations authorizing the release and are imple-
25 mented;

1 “(D) the regulations authorizing the re-
 2 lease identify precisely the geographic area for
 3 the release;

4 “(E) a release on non-Federal land occurs
 5 only with the written consent of the owner of
 6 the land; and

7 “(F) the regulations authorizing the re-
 8 lease include measurable reintroduction goals to
 9 restore viable populations only within the spe-
 10 cific geographic area identified for release in
 11 the regulations.”.

12 **SEC. 602. RECOGNIZING CAPTIVE PROPAGATION AS A**
 13 **MEANS OF RECOVERY.**

14 (a) IN GENERAL.—Section 13 (87 Stat. 902) is
 15 amended to read as follows:

16 **“SEC. 13. RECOGNITION OF CAPTIVE PROPAGATION AS**
 17 **MEANS OF RECOVERY.**

18 “(a) IN GENERAL.—In carrying out this Act, the Sec-
 19 retary shall recognize to the maximum extent practicable,
 20 and may utilize, captive propagation as a means of pro-
 21 tecting or conserving an endangered species or a threat-
 22 ened species.

23 “(b) CAPTIVE PROPAGATION GRANTS.—The Sec-
 24 retary may provide annual grants to non-Federal persons
 25 to fund captive propagation programs for the purpose of

1 protecting or conserving any species that is determined
 2 under section 4 to be an endangered species or a threat-
 3 ened species, if the Secretary determines that such a pro-
 4 gram contributes to enhancement of the population of the
 5 species.”.

6 (b) EFFECT ON PRIOR AMENDMENTS.—Nothing in
 7 this section or the amendment made by this section affects
 8 the amendments made by section 13 of the Endangered
 9 Species Act of 1973 (87 Stat. 902), as in effect on the
 10 day before the date of enactment of this Act.

11 (c) CONFORMING AMENDMENT.—The table of con-
 12 tents in the first section (16 U.S.C. prec. 1531) is amend-
 13 ed by striking the item relating to section 13 and inserting
 14 the following:

“Sec. 13. Recognition of captive propagation as means of recovery.”.

15 **SEC. 603. CLARIFYING THE APPLICATION OF PROHIBI-**
 16 **TIONS TO THREATENED SPECIES.**

17 Section 4(d) (16 U.S.C. 1533(d)) is amended—

18 (1) in the first sentence, by striking “issue”
 19 and inserting “issue, concurrently with or subse-
 20 quent to the regulation that provides for the listing
 21 of the species,”; and

22 (2) in the second sentence, by striking “by reg-
 23 ulation prohibit with respect to any” and inserting
 24 “in the regulations prohibit with respect to the spe-
 25 cific”.

1 **SEC. 604. ENCOURAGING RESEARCH ON ALTERNATIVE**
2 **METHODS AND TECHNOLOGIES.**

3 Section 10(a) (16 U.S.C. 1539(a)) is further amend-
4 ed by adding after paragraph (4) (as added by section
5 404) the following:

6 “(5) RESEARCH ON ALTERNATIVE METHODS
7 AND TECHNOLOGIES.—Priority for issuing permits
8 under paragraph (1)(A) shall be accorded to applica-
9 tions for permits to conduct research on alternative
10 methods and technologies, and the comparative costs
11 of the methods and technologies, to reduce the inci-
12 dental taking as described in paragraph (1)(B) of an
13 endangered species or a threatened species for which
14 the employment of existing methods or technologies
15 for avoidance of the incidental taking entails signifi-
16 cant costs for non-Federal persons.”.

17 **SEC. 605. MODIFYING ENFORCEMENT AUTHORITY.**

18 Section 11 (16 U.S.C. 1540) is amended—

19 (1) in paragraph (2) of the first sentence of
20 subsection (d), by inserting “endangered or threat-
21 ened” after “temporary care for any”;

22 (2) in subsection (e)—

23 (A) in the fourth sentence of paragraph
24 (3), by striking “fish, wildlife,” and inserting
25 “endangered or threatened fish or wildlife,”;
26 and

1 (B) in paragraph (4)—

2 (i) in subparagraph (A), by inserting

3 “endangered or threatened” after “All”;

4 and

5 (ii) in subparagraph (B), by inserting

6 “endangered or threatened” after “import-

7 ing of any”;

8 (3) in the first sentence of subsection (f), by in-

9 serting “endangered or threatened” after “storage

10 of”; and

11 (4) in subsection (g)(2)(C), by inserting before

12 the period at the end the following: “included in a

13 list published under section 4(c)(1)”.

14 **SEC. 606. PROVIDING ADEQUATE NOTICE OF HEARINGS.**

15 (a) IN GENERAL.—Section 14 (87 Stat. 903) is

16 amended to read as follows:

17 **“SEC. 14. NOTICE OF HEARINGS.**

18 “Except as otherwise provided by this Act, the Sec-

19 retary shall provide notice of any hearing or other public

20 meeting at which public comment is accepted under this

21 Act by publication in the Federal Register and in a news-

22 paper of general circulation in the location of the hearing

23 or meeting at least 30 days prior to the hearing or meet-

24 ing.”.

1 (b) CONFORMING AMENDMENT.—The table of con-
 2 tents in the first section (16 U.S.C. prec. 1531) is amend-
 3 ed by striking the item relating to section 14 and inserting
 4 the following:

“Sec. 14. Notice of hearings.”.

5 (c) EFFECT ON PRIOR REPEAL.—Nothing in this sec-
 6 tion or the amendment made by this section affects the
 7 repeal made by section 14 of the Endangered Species Act
 8 of 1973 (87 Stat. 903), as in effect on the day before the
 9 date of enactment of this Act.

10 **SEC. 607. ENSURING THE PROTECTION OF PRIVATE PROP-**
 11 **ERTY RIGHTS.**

12 (a) POLICY.—

13 (1) PURPOSE.—The purpose of this subsection
 14 is to establish a national policy that implementation
 15 of the Endangered Species Act of 1973 (16 U.S.C.
 16 1531 et seq.) shall respect private property rights.

17 (2) AMENDMENT.—Section 2(c) (16 U.S.C.
 18 1531(c)) is amended by adding at the end the fol-
 19 lowing:

20 “(3) PRIVATE PROPERTY RIGHTS.—It is further
 21 declared to be the policy of Congress that Federal
 22 agencies shall carry out this Act in a manner that—

23 “(A) ensures that persons are not denied
 24 the reasonable use of their private property;
 25 and

1 “(B) avoids any significant diminishment
2 of the value of private property.”.

3 (b) DUTY.—

4 (1) PURPOSE.—The purpose of this subsection
5 is to establish an affirmative duty that the Secretary
6 and Federal agencies minimize the impact of con-
7 servation measures on private property.

8 (2) DUTY.—The Act (16 U.S.C. 1531 et seq.)
9 is amended—

10 (A) by redesignating section 15 as section
11 19; and

12 (B) by inserting after section 14 the fol-
13 lowing:

14 **“SEC. 15. MINIMIZATION OF IMPACT OF CONSERVATION**
15 **MEASURES ON PRIVATE PROPERTY.**

16 “(a) IN GENERAL.—In carrying out sections 5 and
17 7—

18 “(1) the Secretary shall balance the objectives
19 of—

20 “(A) achieving the conservation objective
21 for the species; and

22 “(B) ensuring continuing economic growth,
23 providing essential infrastructure, maintaining
24 strong State and local tax bases, and protecting

1 against the diminishment of the use and value
2 of private property; and

3 “(2) the Secretary, the heads of all other Fed-
4 eral agencies, and other officials of the Federal Gov-
5 ernment shall seek to minimize the adverse impacts
6 on the use and value of private property resulting
7 from any requirements imposed on the property
8 under the sections.

9 “(b) RIGHT TO SEEK COMPENSATION.—Nothing in
10 this Act diminishes or impedes the right of an owner of
11 private property to receive compensation from the Federal
12 Government under the Fifth Amendment of the Constitu-
13 tion or other Federal law for lost use of value of the prop-
14 erty due to requirements imposed on the property under
15 this Act after the date of acquisition of the property by
16 the owner.

17 “(c) EXCEPTIONS TO THE APPLICATION OF THE ACT
18 TO PRIVATE PROPERTY.—This Act shall not apply to ac-
19 tivities carried out on—

20 “(1) privately owned property consisting of 5
21 contiguous acres or less, unless the proposed activity
22 presents an imminent threat to the existence of an
23 endangered species or a threatened species; and

24 “(2) such other property specifically identified
25 by the Secretary, by regulation, based on a deter-

1 mination by the Secretary that the proposed activity
 2 will not be likely to jeopardize the continued exist-
 3 ence of a species.”.

4 (3) CONFORMING AMENDMENTS.—

5 (A) The table of contents in the first sec-
 6 tion (16 U.S.C. prec. 1531) is further amend-
 7 ed—

8 (i) by striking the item relating to sec-
 9 tion 15 and inserting the following:

“Sec. 15. Minimization of impact of conservation measures on private prop-
 erty.”;

10 and

11 (ii) by adding at the end the follow-
 12 ing:

“Sec. 19. Authorization of appropriations.”.

13 (B) Section 8(a) (16 U.S.C. 1537(a)) is
 14 amended by striking “section 15 of this Act”
 15 and inserting “section 19”.

16 (c) CITIZEN SUITS.—Section 11(g) (16 U.S.C.
 17 1540(g)) is amended—

18 (1) in paragraph (1)—

19 (A) in subparagraph (A) of the first sen-
 20 tence, by striking “any person, including the
 21 United States and any other governmental in-
 22 strumentality or agency (to the extent per-
 23 mitted by the eleventh amendment to the Con-

stitution),” and inserting “the United States or any agency or official of the United States”; and

(B) in the second sentence, by striking “, without regard to the amount in controversy or the citizenship of the parties,”;

(2) in paragraph (3)—

(A) by striking “(A)”; and

(B) by striking subparagraph (B); and

(3) by adding at the end the following:

“(6) ACTIONS TO REMEDY ECONOMIC INJURY.—Any person (including a person that sustains actual or imminent economic injury as a direct or indirect result of a violation of this Act or a regulation issued under this Act by the United States or any agency or official of the United States) may—

“(A) to the full extent permitted by the Constitution without regard to any prudential limitations, commence a civil suit as authorized by this subsection to remedy any violation of this Act or a regulation issued under this Act by the United States or any agency or official of the United States; and

“(B) intervene as a matter of right in any suit brought under this Act that threatens to

1 cause injury to the person or relates to any in-
2 jury sustained by the person.”.

3 **SEC. 608. ENSURING THE USE OF WATER RIGHTS IN AC-**
4 **CORDANCE WITH EXISTING STATE LAWS.**

5 Section 6(f) (16 U.S.C. 1535(f)) is amended—

6 (1) in the first sentence—

7 (A) by striking “(1)” and inserting “(A)”;

8 and

9 (B) by striking “(2)” and inserting “(B)”;

10 (2) by striking “LAWS.—Any State” and insert-
11 ing the following: “LAWS.—

12 “(1) IN GENERAL.—Any State”; and

13 (3) adding at the end the following:

14 “(2) WATER RIGHTS.—Any water right ac-
15 quired, or otherwise used, by the United States, a
16 permit or license applicant, or any other non-Federal
17 party for any purpose under this Act shall be ac-
18 quired and exercised in accordance with the laws of
19 the State in which the water will be used, including
20 a law providing for any priority system between
21 types of water uses.”.

1 **SEC. 609. PROVIDING FOR FEDERAL COST-SHARING OF IM-**
2 **PLEMENTATION COSTS IMPOSED UNDER**
3 **CONSERVATION PLANS OR AGENCY CON-**
4 **SULTATIONS.**

5 (a) IN GENERAL.—Section 16 (16 U.S.C. 1531 note)
6 is amended to read as follows:

7 **“SEC. 16. FEDERAL COST-SHARING REQUIREMENTS FOR**
8 **CONSERVATION OBLIGATIONS.**

9 “(a) DEFINITION OF ALLOWED COSTS.—In this sec-
10 tion, the term ‘allowed costs’ includes any direct or indi-
11 rect cost incurred by a non-Federal person or Federal
12 power marketing administration that results from compli-
13 ance with a provision of a conservation plan under this
14 Act, a conservation measure described in section 5(u), or
15 a requirement imposed on the person or administration
16 under section 7.

17 “(b) COST SHARING FOR CONSERVATION PLANS.—

18 “(1) COSTS EXCEEDING \$10,000,000.—The Sec-
19 retary shall pay 50 percent of allowed costs incurred
20 by a non-Federal person or Federal power marketing
21 administration that result from compliance with any
22 provision of a conservation plan, to the extent that
23 the allowed costs exceed, in the aggregate,
24 \$10,000,000.

25 “(2) COSTS AT OR BELOW \$10,000,000.—The
26 Secretary may pay a Federal share to a non-Federal

1 person or Federal power marketing administration
2 of any allowed costs less than or equal to
3 \$10,000,000 that result from compliance with a con-
4 servation plan.

5 “(c) COST SHARING FOR COMPLIANCE WITH CON-
6 SULTATION REQUIREMENTS.—The Secretary shall pay 50
7 percent of allowed costs incurred by a non-Federal person
8 or Federal power marketing administration that result
9 solely from requirements imposed on the person or mar-
10 keting administration under section 7.

11 “(d) EXISTING COST-SHARING AGREEMENTS.—Any
12 cost-sharing agreement with a non-Federal person pro-
13 vided in any recovery plan or other agreement in existence
14 prior to the date of enactment of this subsection shall re-
15 main in effect unless the non-Federal person incurring the
16 costs requests that the cost-sharing percentage be recon-
17 sidered.

18 “(e) ADJUSTMENTS TO COST-SHARING PERCENT-
19 AGE.—At the request of the non-Federal person, the Sec-
20 retary may adjust the Federal share determined under
21 subsection (b) or (c) with respect to the person.

22 “(f) PROVISION OF FEDERAL SHARE.—

23 “(1) IN GENERAL.—

1 “(A) NON-FEDERAL PERSONS.—The Sec-
2 retary may make a contribution under sub-
3 section (b) or (c) by—

4 “(i) providing to the non-Federal per-
5 son a habitat reserve grant under section
6 6(b)(14);

7 “(ii) acquiring, from or for the per-
8 son, land or an interest in land as provided
9 in section 5A; or

10 “(iii) providing appropriated funds to
11 the person.

12 “(B) FEDERAL POWER MARKETING AD-
13 MINISTRATION.—The Secretary shall make a
14 contribution under subsection (b) or (c) to a
15 Federal power marketing administration by
16 providing appropriated funds directly to the
17 power marketing administration.

18 “(2) LOANS.—The Secretary may not consider
19 a loan to the non-Federal person or Federal power
20 marketing administration as a contribution or por-
21 tion of a contribution under subsection (b) or (c).

22 “(3) RECOVERED COSTS.—The Secretary may
23 not claim as a portion of the Federal share under
24 subsection (b) or (c) any costs to the Federal Gov-

1 ernment that are recovered through rates for the
2 sale or transmission of power or water.

3 “(4) EFFECT OF FEDERAL NONPAYMENT.—If
4 the Secretary fails to make the contribution required
5 under subsection (b), (c), or (d), the application of
6 the applicable provision of the conservation plan or
7 the requirement under section 7 shall be suspended
8 until such time as the full contribution is made. If
9 the suspended provision or requirement includes a
10 conservation easement or other instrument restrict-
11 ing title to the property of the non-Federal person,
12 nonpayment of the full contribution for a period of
13 more than 4 consecutive years shall result in the
14 nullification of the previously granted restriction on
15 title.

16 “(g) IN-KIND CONTRIBUTIONS.—A non-Federal per-
17 son or Federal power marketing administration may in-
18 clude in-kind contributions in calculating the appropriate
19 share of the costs of the person or administration under
20 this section.

21 “(h) COSTS PAID BY THE SECRETARY.—Compensa-
22 tion from the Federal Government under section 15(b)
23 may not cover costs incurred by a non-Federal person that
24 were paid by the Secretary under subsection (b) or (c).”.

25 (b) CONFORMING AMENDMENTS.—

1 (1) The table of contents in the first section (16
2 U.S.C. prec. 1531) is further amended by striking
3 the item relating to section 16 and inserting the fol-
4 lowing:

“Sec. 16. Federal cost-sharing requirements for conservation obligations.”.

5 (2) Section 10(b)(1)(B) (16 U.S.C.
6 1539(b)(1)(B)) is amended by striking “the effective
7 date of this Act” and inserting “December 28,
8 1973,”.

9 **SEC. 610. ENHANCING PUBLIC EDUCATIONAL OPPORTUNI-**
10 **TIES.**

11 (a) LICENSED EXHIBITORS.—Section 3 (16 U.S.C.
12 1532) is further amended in the proviso of paragraph (3)
13 (as redesignated by section 103(c)(1)) by striking “by mu-
14 seums” and inserting “or species by exhibitors licensed
15 under the Animal Welfare Act (7 U.S.C. 2131 et seq.),
16 museums,”.

17 (b) EDUCATION OF THE PUBLIC.—Section 10(a) (16
18 U.S.C. 1539(a)) is further amended—

19 (1) in paragraph (1)(A)—

20 (A) by striking “to, acts” and inserting the
21 following: “to—

22 “(i) acts”; and

23 (B) by adding at the end the following:

24 “(ii) the public display or exhibition of liv-
25 ing wildlife in a manner designed to educate, or

1 that otherwise contributes to the education of,
2 the public about the ecological role and con-
3 servation needs of the affected species; or”; and
4 (2) by adding after paragraph (5) (as added by
5 section 604) the following:

6 “(6) EDUCATIONAL PERMITS.—

7 “(A) CONDITIONS OF ISSUANCE.—A per-
8 mit referred to in paragraph (1)(A)(ii) shall be
9 issued if—

10 “(i) the applicant holds a current and
11 valid license as an exhibitor under the Ani-
12 mal Welfare Act (7 U.S.C. 2131 et seq.);

13 “(ii) the applicant maintains a public
14 display or exhibition of living wildlife de-
15 scribed in paragraph (1)(A)(ii); and

16 “(iii) viewing of the public display or
17 exhibition is not limited or restricted other
18 than by charging an admission fee.

19 “(B) TERM.—A permit referred to in para-
20 graph (1)(A)(ii) shall be for a term of not less
21 than 6 years.

22 “(C) ADDITIONAL AUTHORITY.—A permit
23 referred to in paragraph (1)(A)(ii) shall also
24 authorize the permittee to import, export, sell,

1 purchase, or otherwise transfer possession of
2 the affected species.

3 “(D) REVOCATION.—The Secretary shall
4 revoke a permit referred to in paragraph
5 (1)(A)(ii) if the Secretary determines that the
6 permittee—

7 “(i) no longer meets the requirements
8 of subparagraph (A) and is not reasonably
9 likely to meet the requirements in the near
10 future;

11 “(ii) is not complying with the terms
12 and conditions of the permit; or

13 “(iii) is engaging in an activity likely
14 to jeopardize the continued existence of the
15 species subject to the permit.”.

16 (c) WILDLIFE BRED IN CAPTIVITY.—Section 10 (16
17 U.S.C. 1539) is further amended by adding after sub-
18 section (k) (as added by section 405(e)) the following:

19 “(l) WILDLIFE BRED IN CAPTIVITY.—For the pur-
20 pose of export or import, or registration of captive-bred
21 wildlife under the captive-bred wildlife registration system
22 established under section 17.21(g) of title 50, Code of
23 Federal Regulations, the terms ‘bred in captivity’ and
24 ‘captive-bred’, with respect to wildlife, mean wildlife, in-

1 cluding eggs, born or otherwise produced from parents in
 2 captivity.”.

3 **TITLE VII—AUTHORIZING** 4 **INCREASED APPROPRIATIONS**

5 **SEC. 701. REAUTHORIZING THE ENDANGERED SPECIES ACT** 6 **OF 1973.**

7 Section 19 (as redesignated by section 607(b)(2)(A))
 8 is further amended to read as follows:

9 **“SEC. 19. AUTHORIZATION OF APPROPRIATIONS.**

10 “(a) IN GENERAL.—In addition to the amounts au-
 11 thorized to be appropriated under section 6(i) and sub-
 12 sections (b) through (e), there are authorized to be appro-
 13 priated—

14 “(1) to the Department of the Interior to carry
 15 out the duties of the Secretary of the Interior under
 16 this Act \$110,000,000 for fiscal year 1996,
 17 \$120,000,000 for fiscal year 1997, \$130,000,000 for
 18 fiscal year 1998, \$140,000,000 for fiscal year 1999,
 19 \$150,000,000 for fiscal year 2000, and
 20 \$160,000,000 for fiscal year 2001;

21 “(2) to the Department of Commerce to carry
 22 out the duties of the Secretary of Commerce under
 23 this Act \$15,000,000 for fiscal year 1996,
 24 \$20,000,000 for fiscal year 1997, \$25,000,000 for
 25 fiscal year 1998, \$30,000,000 for fiscal year 1999,

1 \$35,000,000 for fiscal year 2000, and \$40,000,000
2 for fiscal year 2001; and

3 “(3) to the Department of Agriculture to carry
4 out the duties of the Secretary of Agriculture under
5 this Act \$4,000,000 for each of fiscal years 1996
6 through 2001.

7 “(b) COOPERATIVE MANAGEMENT AGREEMENTS.—
8 There are authorized to be appropriated to the Depart-
9 ment of the Interior to carry out section 6(b),
10 \$20,000,000 for each of fiscal years 1996 through 2001,
11 to remain available until expended.

12 “(c) CONVENTION IMPLEMENTATION.—There are au-
13 thorized to be appropriated to the Department of the Inte-
14 rior to carry out section 8A(e) \$1,000,000 for each of fis-
15 cal years 1996 through 2001, to remain available until ex-
16 pended.

17 “(d) NON-FEDERAL CONSERVATION PLANNING.—
18 There are authorized to be appropriated to the Depart-
19 ment of the Interior to carry out section 10(a)(2)(F)
20 \$20,000,000 for each of fiscal years 1996 through 2001,
21 to remain available until expended.

22 “(e) HABITAT RESERVE GRANTS.—There are au-
23 thorized to be appropriated to the Department of the Inte-
24 rior to provide habitat reserve grants under section

- 1 6(b)(14) \$20,000,000 for each of fiscal years 1996 through
- 2 2001, to remain available until expended.”.



S 768 IS—2

S 768 IS—3

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